CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
PETITIONER,

vs.

FEDERAL LAND BANK OF NEW ORLEANS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 23, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

INDEX

	PAGE
Caption	1
Appellant's Designation of Record on Appeal	2
Petition in Bankruptcy	5
Exhibit—Schedule "A"	6
Schedule "A2"—Secured Claims	6
Schedule "A3"—Unsecured Claims	7
Exhibit—Schedule "B"—	
Schedule "B1"—Real Estate	7
Petition of Farm Debtor for Order restraining Foreclosure of Mortgage by the Federal Land Bank of New Orleans	8
Order approving filing of Petition in Bankruptcy, dated 10/16/37	10
Order dated 10/25/37 referring Proceedings to Douglas Booth, Conciliation Commissioner	11
Offer of Farm Debtor of Proposed Terms of Composition or Extension	12
Application of Farm Debtor for Confirmation of a Composition or Extension	13
Report of Douglas Booth, Conciliation Commissioner, dated 12/16/37	14
Order dated 12/22/37 setting hearing on Report of Conciliation Commissioner on 1/4/38	16
Objections of The Federal Land Bank of New Orleans to the confirmation of the Farm Debtor's Extension Proposal	17
Decree dated 1/4/38 approving Recommendation of Conciliation Commissioner that Farm Debtor's Proposal of Extension be not approved, and Dismissing Proceedings	18
Petition of Farm Debtor to be permitted to appeal in Forma Pauperis	20

INDEX—Continued

PAGE

Affidavit in Forma Pauperis of Minnie Reese Richardson Wragg 21
Assignment of Errors, filed 1/19/38 21
Order of Court dated 2/1/38 denying Application of Farm Debtor to Appeal in Forma Pauperis, and certifying that Appeal is not taken in good faith 23
Petition of Farm Debtor to Re-open and Re-instate cause 24

Answer of The Federal Land Bank of New Orleans to Petition of Farm Debtor to Re-open cause 25
Notation relative to Exhibit "A" 32
Notation relative to Exhibit "B" 32
Exhibit "C"—Decree in case The Federal Land Bank of New Orleans vs. Minnie Reese Richardson Wragg and George B. Wragg, U. S. Dist. Court, Middle Dist. of Alabama, Equity Proceeding, dated 4/21/38 33
Exhibit "D"—Real Estate Purchase Contract of S. P. Storrs to Federal Land Bank of New Orleans, dated 4/3/39, and acceptance of Federal Land Bank of New Orleans thereon 35

Agreement of Counsel to Submission of Cause to Hon. T. A. Murphree, U. S. District Judge 40
Opinion of the Court dated 8/5/40 41
Final Decree, entered 8/6/40 48
Notice of Appeal 49
Appeal Bond 50
Petition and Order extending time 30 days for filing Record on Appeal 52
Assignment of Errors, filed 11/11/40 54
Clerk's Certificate 56

INDEX—Continued

		PAGE
Proceedings in U. S. C. C. A., Fifth Circuit		57
Minute entry of argument and submission		57
Opinion, Holmes, J.		57
Petition for rehearing	(omitted in printing)	61-63
Order denying rehearing		64
Clerk's certificate	(omitted in printing)	64
Order allowing certiorari		64

IN THE
UNITED STATES CIRCUIT COURT OF APLEALS FOR THE FIFTH CIRCUIT.

No. 9753.

CAPTION.

BE IT REMEMBERED that at a regular term of the United States District Court, in and for the Northern Division of the Middle District of Alabama, the Honorable T. A. Murphree, United States District Judge, duly designated and appointed to hold Court for the Middle District of Alabama, presiding, and holding its session at Montgomery, Alabama, which said term began on the 5th day of December, 1939, and continued from term to term, thereafter, up to and including the 6th day of August, 1940, there came on to be heard and determined, among other causes pending on the docket, while Court was regularly in session, the following cause:

IN RE:
MINNIE REESE RICHARDSON WRAGG, FARM DEBTOR.

In Proceedings under Section 75, of the Bankruptcy Act.
Appellant.

FEDERAL LAND BANK OF NEW ORLEANS,
Objecting Creditor.

No. 8553.

Appearances:
Walter J. Knabe, Montgomery, Alabama,
Jack Crenshaw, Montgomery, Alabama,
Attorneys for Appellant.
Steiner, Crum & Weil, Montgomery, Alabama,
Attorneys for Objecting Creditor.

2 In the Matter of
Minnie Reese Richardson Wragg,
Farm Bankrupt.

To the Clerk of the District Court for the Northern Division of the Middle District of Alabama:

You will please prepare a transcript on appeal herein, including the following:

1. Original Farm Debtor's petition filed October 16, 1937.

2. Schedules A-2, A-3, and B-1, attached to original petition, omitting all formal portions thereof.

3. Order of the District Court approving filing of the original petition dated October 16, 1937.

4. Order appointing Douglas Booth Conciliation Commissioner and referring case to Conciliation Commissioner.

5. Petition of Farm Debtor for order restraining foreclosure of mortgage, filed October 16, 1937.

6. Offer of extension dated November 12, 1937.

7. Application for confirmation of offer of extension filed December 3, 1937.

8. Report of the Conciliation Commissioner dated December 16, 1937.

9. Order setting report Conciliation Commissioner for hearing filed December 22, 1937.

10. Objection of Federal Land Bank to confirmation of Farm Debtor's extension proposal filed January 4, 1938.

11. Decree of District Court dismissing petition dated January 4, 1938, filed January 4, 1938.

12. Application to be permitted to appeal dated January 18, filed January 19, 1938.

13. Assignment of errors filed January 19, 1938.

14. Certificate of District Court that appeal not taken in good faith filed February 1, 1938.

15. Petition to reopen and reinstate cause, filed March 11, 1940.

3 16. Answer of Federal Land Bank of New Orleans to petition to reinstate, omitting Exhibits A, B, and C, but including Exhibit D, filed June 29, 1940.

17. Agreement of submission filed July 6, 1940.

18. Opinion and decree of District Court denying petition to reopen and dismissing proceedings, dated August 6, 1940, filed August 8, 1940.

19. Statement of appeal filed September 5, 1940.

20. Bond on appeal.

21. Notice of appeal and acceptance of service thereof.

WALTER J. KNABE,
JACK CRENSHAW,
Attorneys for Appellant.

Due service and receipt of a copy of the within citation is hereby admitted.

Done this 1 day of Nov., 1940.

B. P. CRUM,
Attorney for Objecting Creditor, Federal Land Bank.

Filed Nov. 2, 1940.

4 FARM DEBTOR'S PETITION.

In Proceedings of Section 75 Under Bankruptcy Act.
No. 8553.

To the Honorable C. B. Kennarmer, Judge of the United States District Court for the Northern Division of the Middle District of Alabama:

The petition of Minnie Reese Richardson Wragg, whose address is Elmore, R. F. D., of the County of Elmore, in said District and State of Alabama, who is hereafter called "Petitioner," respectfully represents that said petitioner is a farmer as defined by law at this time, and is entitled to file this petition under the provisions of Section 75 of the Bankruptcy Act as last amended; that petitioner's farming operations occur, or are conducted in the County or Counties of Elmore within said judicial District; that petitioner is insolvent (or unable to meet petitioner's debts as they mature); and that petitioner desires to affect a composition or extension of time to pay petitioner's debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed marked A (1, 2, 3, 4, 5) and verified by your petitioner's oath, contains a full and true statement of all petitioner's debts, and (so far as it is possible to ascertain) the names and places of residence of petitioner's creditors and such further statements concerning said debts as are required by the provisions of said Acts.

That the schedule hereto annexed marked B (1, 2, 3, 4, 5, 6) and verified by your petitioner's oath, contains an accurate inventory of all of her property both real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

Wherefore your petitioner prays, that this petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

C. E. ALEXANDER,
Attorney for Petitioner,
Prattville, Alabama.

5 United States of America,
Northern Division of the
Middle District of Alabama.

I, Minnie Reese Richardson Wragg, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

Subscribed and sworn to before me, this 13th day of October, A. D. 1937.

HEIRSTON L. FOSTER,
(Seal) Notary Public.

Filed October 16, 1937.

6

SCHEDULE A-2.

Creditors Holding Securities.

Description of Securities.—When and where debts were contracted.	Value of Securities $ Cts.	Amount of Debts $ Cts.
Federal Land Bank of New Orleans. New Orleans, La.	6,900.00	4,224.94
The west half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acre, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns dated November 29, 1933, executed by the Federal Land Bank of New Orleans.		
Oct. 15, 1934. New Orleans, La.		
Total	6,900.00	4,224.94

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

7 SCHEDULE A-3.

Creditors Whose Claims Are Unsecured.

Names of Creditors.—Residences.—When and where contracted.	Amount $ Cts.
C. S. Richardson, 2201 M St. NW, Washington, D. C. Over a period of four years in Montgomery, Ala. and Washington, D. C. Money loaned no note of security.	4,928.00
M. R. Richardson, Montgomery, Ala. Over a period of four years in Montgomery, Ala. Money loaned no note of security.	1,489.00
J. E. Richardson, Montgomery, Ala. In Montgomery, Ala. Over a period of four years. Money loaned no note of security.	6.00
O. A. Richardson, Montgomery, Ala. In Montgomery, Ala. Over a period of four years. Money loaned no note of security.	32.00
Total	6,455.00

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

SCHEDULE B—STATEMENT OF ALL PROPERTY OF BANKRUPT.

8 Schedule B-1.

Real Estate.

	Estimated Value $ Cts.
The following land located in Elmore County, Alabama:	6,900.00
The West half of the Northeast quarter and the Northeast quarter of the Southwest	

quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acres, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by the Federal Land Bank of New Orleans.

Mortgage to Federal Land Bank of New Orleans, La.

Mortgage executed on the 15th day of Oct. 1934 for the amount of $3,857.00. Mortgage has been decreed to be foreclosed. Amount now due as ascertained by the Court $4,647.43.

Total 6,900.00

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

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9 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of said Court:

Your petitioner, the above named debtor, would show unto your Honor that she has filed in this Honorable Court a petition under one of the debtor's provisions or one of the Sections of Chapter A of the act establishing a uniform system of bankruptcy in the United States as amended, and that said matter is pending in your Honor's Court, and your Honor's petitioner would further show that the Federal Land Bank of New Orleans, Louisiana, is about to foreclose a certain mortgage on property of your petitioner and her estate and sell the same for the purpose of foreclosing said mortgage and for the payment of its mortgaged debts

and through the agency of or with the aid of Steiner, Crum and Weil, a firm of attorneys at law, whose address is Montgomery, Alabama, as its agent or agents or attorney or attorneys and is about to sell for purpose stated the following described property of petitioner and her estate, to-wit:

The West half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acres, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by the Federal Land Bank of New Orleans. Above property located in Elmore County, Alabama.

Your petitioner avers that said sale should be stayed and restrained. Your petitioner would further show that in proceedings of Section 75 of Bankruptcy Act, as amended, the provisions of Sub-Section N, and Sub-Section O, of said Section 75, give to this Honorable Court exclusive jurisdiction of petitioner and all her property; and the provisions of Sub-Section 11, are effective as to this debtor; and under the law this Honorable Court is authorized to protect its jurisdiction of the property of the estate of the debtor and determine its lawful disposition.

Wherefore petitioner prays that this Honorable Court do stay and restrain the said Federal Land Bank of New Orleans, from further foreclosure proceedings, or to sell this said property of the petitioner for the purpose the foreclosing the said mortgage referred to above and of the mortgage debt secured thereby; and petitioner prays for

such further, special or general relief as she may be entitled to have upon a consideration of this petition.

And on oath she states that the averments of the petition are true.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.
C. E. ALEXANDER,
Attorney for Pettioner.

United States of America,
Northern Division of the
Middle District of Alabama.

I, Minnie Reese Richardson Wragg, the petitioner debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

Subscribed and sworn to before me, this 13 day of October, A. D. 1937.

HEIRSTON L. FOSTER,
(Seal) Notary Public.

Filed Oct. 16, 1937.

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11 (Title Omitted.)

At Montgomery, Alabama, in said district, on the 16th day of October, 1937, the petition of Mrs. Minnie Reese Richardson Wragg, praying that she be afforded an oppor-

tunity to effect a composition or an extension of time to pay her debts under Section Seventy-five of the Bankruptcy Act, having been heard and duly considered by the undersigned Judge of this Court,

It is now ordered that the same is approved as properly filed under said Section.

This 16th day of October, 1937.

C. B. KENNAMER,
United States District Judge.

Filed Oct. 16, 1937.

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12 In the United States District Court for the Middle District of Alabama, Northern Division.

In the Matter of:
Minnie Reese Richardson Wragg, Farm Debtor.
No. 8553

The petition of Mrs. Minnie Richardson Wragg, whose post office address is R. F. D. Elmore, Ala., of the county of Elmore, State of Alabama, filed in this Court on the 16th day of October, her petition, praying that she be afforded an opportunity to effect a composition or extension of time to pay her debts under Section Seventy-five of the Bankruptcy Act, as amended, in farm debtor bankruptcy proceedings, and said petition having been duly approved by order of this Court on the 16th day of October, 1937,

It is therefore ordered that the said matter be referred to Mr. Douglas Booth, a duly qualified conciliation commissioner of this Court for the County of Autauga, an adjoining County to Elmore County, the conciliation commissioner

of Elmore County having rescued himself from serving in this case, and the farm debtor and her attorney having consented to the reference of this case to the conciliation commissioner of Autauga County.

It is further ordered that the said Douglas Booth, conciliation commissioner of Autauga County take such further proceedings therein as are required by said Section of the Bankruptcy Act, as amended; and that the said Mrs. Minnie Reese Richardson Wragg attend before said conciliation commissioner at such times and places as she may be required and shall submit to such orders as may be made by said conciliation commissioner or by this Court relating to said proceedings under said Section of the Bankruptcy Act.

This 25th day of October, 1937.

C. B. KENNAMER,
United States Judge.

Filed Oct. 25, 1937.

OFFER OF PROPOSED TERMS OF COMPOSITION OR EXTENSION.

13 (Title Omitted.)

Comes the above named farm debtor and offers the following terms of composition and extension:

(1.) To pay the Federal Land Bank of New Orleans, La., the sum of One Hundred Twenty-five Dollars per year, as rent, on the 15th day of October of each year for a period of three years, on the land on which they now hold a mortgage, at the end of said period of three years to pay the said Federal Land Bank of New Orleans the balance

due on their said mortgage. The said Federal Land Bank of New Orleans is not to molest or in any way interfere with the possession of said farm debtor or to proceed with the foreclosure of their said mortgage.

(2.) To execute a written promise to pay all other named creditors after a period of three years.

Given under my hand this 12th day of November, 1937.

MINNIE REESE RICHARDSON WRAGG.

Filed this the 12th day of November, 1937.

DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

APPLICATION FOR CONFIRMATION OF A COMPOSITION OR EXTENSION.

14 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of the District Court of the United States for the Northern Division of the Middle District of Alabama:

Now comes Minnie Reese Richardson Wragg, the above named debtor, and respectfully represents to the Court that, after she has filed in Court a schedule of her property and a list of her creditors, as required by law, she offered a proposal for a composition, or an extension to her creditors, which proposal has been accepted in writing by a majority in number of all such creditors, including secured creditors whose claims have been or are to affected by the pro-

posal, (the one secured creditor having not made acceptance) the number accepting my said proposal represent a majority in number and amount of all claims.

Wherefore the said Minnie Reese Richardson Wragg respectfully asks that the said proposal be confirmed by the Court.

Given under my hand this 3rd day of December, 1937.

MINNIE REESE R. WRAGG,
Debtor.

Filed this the 3rd day of December, 1937.

DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

REPORT OF DOUGLAS BOOTH, CONCILIATION COMMISSIONER, AUTAUGA COUNTY, ALABAMA.

15 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of said Court:

The undersigned Conciliation Commissioner of Autauga County, Alabama, most respectfully reports to your Honor as follows:

That pursuant to the provisions of Sub-section (e) of Section 75 of the Bankruptcy Act as last amended, he gave notice as required thereby to the secured and unsecured creditors of the debtor, calling the first meeting to be held on the 12th day of November, 1937, at 10:00 o'clock A. M., at the office of the undersigned Conciliation Commissioner,

in Prattville, Alabama; that at said meeting an examination of the debtor was had and a transcript of her testimony taken on such examination is submitted herewith. That the farm debtor then filed an "offer of proposed terms of composition or extension," which is submitted herewith. That thereupon the meeting was continued until December 3rd, 1937, at 10:00 o'clock A. M., before the undersigned as Conciliation Commissioner, at his office in Prattville, Alabama, and at said meeting proof of claims were filed by all the unsecured creditors listed in the schedules attached to the farm debtor's original petition, and no objection being made thereto, were allowed. The The Federal Land Bank of New Orleans, the only secured creditor listed in the schedules attached to the debtor's original petition, appeared specially through its attorneys and filed a motion to dismiss the original petition, on the ground that the debtor was not at the time of the filing of her original petition a farmer, within the meaning of Section 75 of the Bankruptcy Act as last amended, and thereafter, without waiving its said motion, filed
16 its proof of its secured claim, and no objection being made thereto the claim was allowed.

Thereupon an additional examination of the farm debtor was had, and the attorneys for The Federal Land Bank of New Orleans examined as witnesses as to the value of the lands Mac Sanders and John Barber, who testified as to the value of the lands conveyed by the mortgage held by The Federal Land Bank of New Orleans and given by the debtor to secure its said claim. A transcript of the additional testimony of the farm debtor and a transcript of the testimony of said named witnesses is submitted herewith.

Acceptances each of the unsecured creditors of the "offer f proposed terms of composition or extension" made by the debtor were filed, and the secured creditor, The Federal Land Bank of New Orleans, filed its rejection of the

debtor's said "offer of proposed terms of composition or extension."

The debtor filed her application for confirmation of her "offer of proposed terms of composition or extension." Said application, together with the acceptance of the unsecured creditors and the rejection of the secured creditor, and the proofs of the allowed secured and unsecured claims, are transmitted herewith.

Upon consideration, it is my opinion from the testimony that the proposal of the said farm debtor does not include an equitable and feasible method of liquidating the claim of the secured creditor and of her financial rehabilitation. The evidence further shows that the reasonable value of the land does not exceed the indebtedness secured by the mortgage on the land, and the offer to pay One Hundred and Twenty-five Dollars ($125.00) per year rent for the land, which the testimony shows is less than its yearly rental value, will not give a fair return on the mortgage indebtedness during the proposed extended period.

Without going into further detail as to the testimony or giving further reasons, it is my recommendation that the offer be not approved.

Respectfully submitted,
DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

17 Filed Dec. 16, 1937.

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18 (Title Omitted.)

On December 16th, 1937, the Conciliation Commissioner to whom this proceedings had theretofore been referred

by order of the Court, submitted to the Court, and filed in the office of the Clerk of the Court, a recommendation that the proposal made by the farm debtor to her creditors be not approved by the Court,

It is now ordered that the report of the Conciliation Commissioner, and such recommendation, be set down for hearing and appropriate action of the Court thereon, in the Chambers of the United States District Judge, at Montgomery, Alabama, at 10:00 o'clock A. M., Tuesday, the 4th day of January, 1938.

It is further ordered that the Clerk of this Court send by mail a copy of this order to the farm debtor, her attorney of record, and to each of the creditors of the farm debtor, or their attorney of record.

This 22nd day of December, 1937.

C. B. KENNAMER,
United States District Judge.

Filed Dec. 22, 1937.

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19 (Title Omitted.)

Comes The Federal Land Bank of New Orleans, a corporation incorporated under an Act of Congress of the United States, having its principal place of business in the City of New Orleans, State of Louisiana, a secured creditor of the farm debtor in this proceeding, and objects to the confirmation of the extension proposal made by the debtor to her creditors, and for grounds of such objections assigns the following:

(1) Said proposal is not a fair, equitable, and feasible method for the liquidation of this creditor's secured debt

against the debtor, nor is it an equitable and feasible method of financial rehabilitation for the debtor.

(2) Said proposal is not for the best interest of all of the creditors of the debtor.

(3) Said proposal was not made in good faith.

STEINER, CRUM & WEIL,
Attorneys for The Federal
Land Bank of New Orleans.

Filed Jan. 4, 1938.

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20 (Title Omitted.)

This matter coming on this day to be heard upon the report of the Conciliation Commissioner and his recommendation that the proposal made by the farm debtor to her creditors be not approved by the Court, and also upon the motion of The Federal Land Bank of New Orleans, a secured creditor of the debtor, that the original petition of the debtor be dismissed on the ground that the debtor was not a farmer when her petition was filed, within the meaning of the law, and on the objections filed by said The Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors;

Came the farm debtor by her attorney, and The Federal Land Bank of New Orleans by its attorney, and argued and submitted the matter to the Court for its decision and judgment:

Upon consideration, the Court is of the opinion that the recommendation of the Conciliation Commissioner that the proposal made by the farm debtor to her creditors be not

approved, should be approved and adopted by the Court, and in view of that conclusion it is unnecessary to pass on the question of whether the debtor is a farmer or not, within the meaning of the law.

It is accordingly Ordered, Adjudged, and Decreed by the Court and the Judge thereof that the recommendation of the Conciliation Commissioner that the proposal made by the farm debtor to her creditors be and the same is hereby approved, and the proposal is not approved.

It is further Ordered, Adjudged, and Decreed by the Court and the Judge thereof that the objections made by The Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors be and the same are hereby sustained, and that
21 the extension proposal made by the debtor to her creditors be and the same is hereby disapproved.

The debtor through her attorney having requested that she be granted fifteen days from the date of this order within which time to amend her original petition and pray to be adjudged a bankrupt, and the Court being of the opinion after hearing argument of counsel for the respective parties that the debtor is not entitled to so amend her petition in order to obtain the benefits of Sub-section (s) of Section 75 of the Bankruptcy Law, but she is entitled to become a voluntary bankrupt under the general Bankruptcy Law as last amended if she so desires:

It is Ordered and Adjudged that the debtor has fifteen days from the date of this decree within which to take such steps toward becoming a voluntary bankrupt under the general Acts of Bankruptcy as last amended as she may be advised to adopt. If such action is not taken by the debtor within the time stated it is further Ordered and Adjudged that her original petition and all proceedings

thereunder be and the same stand dismissed out of this Court.

Done at Montgomery, this January 4, 1938.

C. B. KENNAMER,
District Judge.

Filed Jan. 4, 1938.

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22 (Title Omitted.)

The above named Minnie Reese Richardson Wragg, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 4th day of January, 1938, does hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons set forth in the assignment of errors filed herewith, and she prays that her appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit under the rules of such cases made and provided.

And your petitioner further prays that she be allowed to perfect said appeal without being required to enter into securities for the cost or to make bond, she having filed herewith an affidavit of poverty.

Respectfully submitted this the 18 day of January, 1938.

C. E. ALEXANDER,
Attorney for Minnie Reese
Richardson Wragg.

Filed January 19, 1938. 5:30 P. M.

23 State of Alabama,
Montgomery County.

Before me, the undersigned authority in said state and county personally appeared Minnie Reese Richardson Wragg who being by me first duly sworn, deposes and says on oath as follows: I have heretofore filed a petition in the United States District Court for the Middle District of Alabama, Northern Division, under Section 75 of the Bankruptcy Law seeking a composition or extension of my debts and on January 4, 1938, Honorable C. B. Kennamer, Judge of said Federal Court decreed adversely to my interest and I desire to perfect an appeal but I am without funds or any means to give security or bond for the perfection of said appeal; that I have no means whatsoever to obtain any money and that I cannot obtain any person to become surety for me and that I believe that I am entitled to the redress that I seek on said appeal and that I am a citizen of the United States.

MINNIE REESE RICHARDSON WRAGG.

Sworn to and subscribed before me this 19 day of January, 1938.

FLORA E. ELDER,
(Seal) Notary Public.

Filed Jan. 19, 1938. 5:30 P. M.

---

24 (Title Omitted.)

Now comes Minnie Reese Richardson Wragg, farm debtor in the above entitled cause and files the following assignment of errors upon which she is relying upon her prosecution of her appeal in the above entitled cause from the

decree made by this Honorable Court on the 4th day of January, 1938.

1.

That the United States District Court for the Northern Division of the Middle District of Alabama erred in approving the recommendation made by the Conciliation Commissioner.

2.

That said Court erred in its order and judgment and decree sustaining the objections made by the Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors.

3.

That said Court erred in its decree denying the right of the debtor to amend her petition in order to obtain the benefits of Sub-section S of Section 75 of the Bankruptcy Law.

C. E. ALEXANDER,
Attorney for Appellant.

Filed Jan. 19, 1938. 5:30 P. M.

State of Alabama,
Autauga County.

Before me, the undersigned authority in said State and County, personally appeared C. E. Alexander, who being by me first duly sworn deposes and says on oath as follows: I am the attorney for Minnie Reese Richardson Wragg in the matter of her proceeding under Section 75 of the Bankruptcy Act. I have acted as her sole attorney in this matter which is filed in the District Court of the United States

for the Northern Division of the Middle District of Alabama. For my services in this matter I have not been paid anything and have no agreement as to any pay or fee. I have been given no security for any fee. I have been given no promise of pay in this matter.

C. E. ALEXANDER.

Sworn to and subscribed before me this 19th day of Jan. 1938.

MITTIE RAY,
(Seal) Notary Public.

Filed Jan. 19, 1938. 5:30 P. M.

---

26 (Title Omitted.)

This matter came on for hearing on the application of Minnie Reese Richardson Wragg, farm debtor, to be permitted to appeal *in forma pauperis*, and upon consideration it is Ordered and Adjudged that said application be and it is hereby denied.

And this Court further certifies, pursuant to Section 832, Title 28, of the United States Code, that in its opinion said appeal is not taken in good faith.

Dated this February 1st, 1938.

C. B. KENNAMER,
U. S. District Judge.

Filed Feb. 1, 1938.

27 (Title Omitted.)

To the Honorable Charles B. Kennamer, Judge of said Court:

Your petitioner, the above styled party, would show unto your Honor that heretofore she did file in this Court what is commonly called a farm debtor proceeding whereby she sought relief under the provisions of Section 75 of the Bankruptcy Act and that her said case in said Court has been terminated or closed; that under the provisions of sub-divisions of paragraph 8 of Section 2 of the Act establishing a Uniform System of Bankruptcy throughout the United States, Courts of Bankruptcy are given authority and jurisdiction to reopen cases which were closed before being fully administered; and petitioner avers that his case has not been fully administered; and she avers that a similar duty and right is conferred by the provisions of Section 75, as amended, which enactment expressly provides that relief may be granted to any farm debtor occupying the status of your petitioner. Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75.

Wherefore, petitioner prays that her case be reinstated or reopened and that same re re-referred to Referee or Conciliation Commissioner and that proceedings be had ir said case as provided by law and by the rules of this Honorable Court.

Your petitioner further shows that there are on file in her former farm debtor petition certain schedules as re-

quired by the provisions of said Section 75 of the
28 Bankruptcy Act, together with all information required by the provisions of said Act. She prays that if she be mistaken in the form of relief, and that if she should refile instead of asking for reinstatement and reopening of her former case, then she prays that her former schedules and information be taken as part of this petition, and she hereby offers to pay such fee or fees as are required under said Act.

MINNIE REESE WRAGG,
Petitioner.

Sworn to and subscribed before me this 4th day of March, 1940.

EUGENIA K. RANKIN,
(Seal) Notary Public.

Filed by Walter J. Knabe, as Attorney for Minnie Reese Wragg.

Filed March 11, 1940.

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29 (Title Omitted.)

To the Honorable Chas. B. Kennamer, Judge of said Court:

Now comes the Federal Land Bank of New Orleans (hereinafter for convenience called respondent), solely and specially for the purpose of this answer and motion, and for answer to the petition of the said Minnie Reese Wragg, filed in this Court on, to-wit, March 11, 1940, to reinstate or reopen the proceedings in the above entitled cause, respectfully avers and makes known to the Court:

I.

(a) On, to-wit, October 15, 1934, the petitioner as Minnie Reese Richardson Wragg, made, executed and de-

livered to respondent, the Federal Land Bank of New Orleans her promissory note and mortgage in the principal sum of, to-wit, $3,857 00, which said mortgage was given to secure the purchase money for that certain real property in said mortgage described, consisting of 138 acres of land, more or less, situated in Elmore County, Alabama, which said Bank had sold and conveyed to the mortgager, and which said consideration was payable in twenty (20) annual installments with interest thereon at the rate of 5% per annum. The petitioner and mortgagor defaulted in the payment of the first and second installments due under said mortgage, as also in other respects, and the mortgagee, respondent, as it was by the terms and provisions of said mortgage authorized to do, declared the entire indebtedness secured by said mortgage to be due and payable, and, on, to-wit, February 4, 1937, it filed its bill of complaint in this Honorable Court, sitting in equity, to foreclose the said mortgage.

The mortgagor, petitioner here, employed counsel and defended or pretended to defend or contest said suit, but on submission of the cause on pleadings and proof, said Court in Equity decreed that complainant was entitled to relief as prayed for and to have said mortgage foreclosed, and appointed a Special Master to ascertain and report the amount of indebtedness due and owing respondent under said mortgage.

The Special Master on, to-wit, August 16, 1937, found and reported the amount due as $4,647.43, and on, to-wit, September 7, 1937, said report was by decree of said Court in Equity confirmed, and directed the Special Master, on failure of the mortgagee within the time specified by the decree, to pay said indebtedness, to proceed to advertise and sell said property.

Thereupon, to-wit, October 16, 1937, petitioner here filed in this Court, in Bankruptcy, her petition and proceeding

as a farmer debtor under Section 75 of the Bankruptcy Act. The Court thereupon appointed a Conciliation Commissioner therein, to whom said proceedings were regularly referred in accordance with said Bankruptcy Act, and said Court ordered a stay of said proceedings in equity, to foreclose said mortgage until the further order of the Court.

On, to-wit, December 15, 1937, said Conciliation Commissioner, after hearing testimony, found that the proposal of the petitioner, rejected by respondent, was unfair and inequitable; that the reasonable value of the land did not exceed the indebtedness thereon and the offer of $125.00 yearly rental was less than its rental value and would not give a fair return on the mortgage debt, and made his report to the Court in which he recommended that the offer of composition or extension made by petitioner and which respondent had rejected, be not approved. A copy of said report, for the convenience of the Court, is attached hereto as Exhibit A, and made a part hereof.

On, to-wit, January 4, 1938, the Court made and entered an order or decree approving the recommendation of the Commissioner and disapproving the proposal made by petitioner. A true and correct copy of said order or decree, for the convenience of the Court, is hereto attached, marked Exhibit B, as a part hereof. As will be observed,
31 it is recited in said decree that:

"The debtor through her attorney having requested that she be granted fifteen days from the date of this order within which time to amend her original petition and pray to be adjudged a bankrupt, and the Court being of the opinion after hearing argument of counsel for the respective parties that the debtor is not entitled to so amend her petition in order to obtain the benefits of Sub-section (s) of Section 75 of the Bankruptcy Law, but she is entitled to

become a voluntary bankrupt under the general Bankruptcy Law as last amended if she so desires."

In said order or decree it was further provided that the debtor be allowed fifteen days to take such steps toward becoming a voluntary bankrupt under the General Acts of Bankruptcy, as last amended, as she might be advised to adopt and that if such action were not taken, petitioner's original petition and all proceedings thereunder should stand dismissed out of said Court.

No further proceedings having been taken therein by the said petitioner, the Court, in said Equity proceeding, on, to-wit, February 5, 1938, thirty days of more after the making of said former order, directed the Special Master to proceed to carry out the said decree of sale under said mortgage and on, to-wit, March 12, 1938, the property was sold by the said Special Master and bid in by the Federal Land Bank of New Orleans for the sum of $2,500.00, being the last and highest bid received.

After due notice, said Court, sitting in Equity, and desiring to be as lenient to petitioner as possible, on, to-wit, April 21, 1938, made and entered a decree reciting that the Court, having indicated that in its opinion the bid of $2,500.00 was inadequate, and the bidder having voluntarily increased its bid to the sum of $4,500.00, which the Court found to be fair and reasonable, and materially more than the property would bring at public sale, confirmed said report of the Special Master as thus amended; and directed the Special Master to make, execute and deliver to the said The Federal Land Bank of New Orleans a deed to said property, and by said decree, after even taxing the costs and expenses of the proceeding against the Federal Land Bank, rendered a deficiency decree against the said petitioner for the sum of, to-wt, $543.98, copy of which

said decree, for the convenience of the Court, is
32 hereto attached and marked Exhibit C, as a part hereof.

The Special Master, on to-wit, the ... day of April, 1938, made, executed and delivered his deed conveying said property to the said The Federal Land Bank of New Orleans, and the respondent, thereupon, was placed in possession of the said real property.

(b) Relying upon the integrity and finality of said decree of sale, and of the Master's deed executed thereunder, respondent deferred making any disposition of the property until to-wit April 3, 1939, when it made and entered into a written contract or agreement with one S. P. Storrs of Elmore County, Alabama, whereby it agreed and contracted to sell and convey said real property to the said Storrs for the sum of $3,500.00, subject only to the statutory right of redemption (which has now expired), of which consideration the sum of, to-wit, $700.00 has been paid by the said Storrs to respondent, pursuant to said agreement, and the remainder is to be paid in certain annual installments and said Storrs has been let into and is now in possession of said property and is faithfully carrying out the provisions of said contract of sale. A true copy of which contract is hereto attached and marked Exhibit D, as a part hereof.

Wherefore respondent says the status with respect to said property had materially changed, when said petition was filed, in March, 1940, the rights of third parties have intervened and vested, and it would be most inequitable and unfair to it as also to the said Storrs, to now grant the said petition and reopen or reinstate the said bankruptcy or farm debtor proceedings, especially so, since petitioner has made no attempt, and shown no purpose or desire to redeem said property. Although the debt secured by said

mortgage was given as aforesaid for the purchase price of said real property, and the mortgagor remained in possession thereof for several years, she has paid nothing whatever on said debt, except that the mortgagee collected from the tenants on said property some rent for the years 1933 and 1934, amounting to about $250.00, nor has she even paid the taxes on said property; and she had and has no equity whatever therein, since said property is now worth not exceeding the mortgage debt thereon.

33

II.

Further answering said petition, respondent says that the said proceedings instituted by the petitioner as a farmer debtor, under Section 75 of the said Bankruptcy Act, having been by the final decree if this Court dismissed, the said case was not pending in this Court when the petition to reopen or reinstate the same was filed, and the said case was not dismissed by any Conciliation Commissioner, Referee or Federal Court because said Court had erroneously assumed or held that Sub-section (s) of Section 75 of said Act was unconstitutional; and no sufficient right or reason is set up in the petitioner's said petition for the exercise now of any discretion which the Court may have to reopen or reinstate said farmer debtor proceedings under said Section 75 or any amendment thereof.

III.

Defendant further says that at the time of the filing of her said farm debtor proceedings in this Court, the petitioner was not a *bona fide* "farmer" within the meaning and purview of Section 75 of the Bankruptcy Act, as was revealed by the testimony and proceedings before the Conciliation Commissioner, to whom her said petition was referred, to all of which said proceedings reference is here made. That it was disclosed by said testimony and proceed-

ings that there were only about fifteen or eighteen acres of said property in cultivation for the year 1937, and that by tenants of the petitioner, and the rental therefor was, to-wit, $45.00—not materially more than enough to pay the taxes thereon—while the reasonable rental value of the whole of said property was shown to be from $150.00 to $200.00 per year; and that by the schedules so filed by said petitioner it appeared that her income or support was derived from other sources.

IV.

Respondent further avers: that petitioner having refused or failed to amend her proceedings and ask that she be adjudged a voluntary bankrupt, as she was expressly permitted to do by the said order or decree of the Court of January 4, 1938, said order or decree became final or conclusive as to rights which have vested thereunder,
34 and she is now estopped or precluded from having said proceedings reopened or reinstated to the detriment or prejudice of petitioner and its vested rights, and of those claiming under it.

V.

The application of the petitioner to reopen or reinstate the proceedings filed by her in this Court on, to-wit, October 16, 1937, was not seasonably made.

VI.

This Honorable Court is without jurisdiction now to reopen or reinstate the said farm debtor petition and proceedings instituted by the petitioner October 16, 1937.

Wherefore, and for the several reasons herein set forth, respondent respectfully objects to and protests against the

granting of said petition insofar as it seeks to reopen or reinstate the said farmer debtor proceedings and now moves the Court to dismiss or deny the said petition so filed herein on, to-wit, March 11, 1940.

STEINER, CRUM & WEIL,
Attorneys for Respondent, The Federal Land Bank of New Orleans.

Filed June 29, 1940.

35 State of Louisiana,
Parish of Orleans.

Before me, the undersigned Notary Public in and for the State and Parish aforesaid, personally appeared W. W. Fussell, who being by me first duly sworn, deposes and says that he is Vice-President and Treasurer of The Federal Land Bank of New Orleans, and is authorized for and on its behalf to make this affidavit; that he has read the foregoing answer and has knowledge of the facts therein stated and that the facts therein set forth are true to the best of affiant's knowledge and belief.

W. W. FUSSELL.

Subscribed and Sworn To before me, as witness my hand and official seal, this the 28th day of June, 1940.

HAROLD MOSES,
(Seal) Notary Public.

35¼ (EXHIBIT "A" is hereinabove set out as "Report of Conciliation Commissioner, filed December 16, 1937, see Page No. 14.)

* * * * * * * *

35½ (EXHIBIT B is hereinabove set out as "Decree of Court Approving the Recommendation of the Conciliation Commissioner, and Dismissing the Proceedings. See Page No. 18.)

* * * * * * * *

36 EX. "C".

In the District Court of the United States, for the Northern Division of the Middle District of Alabama.

The Federal Land Bank of New Orleans
vs. In Equity
Minnie Reese Richardson Wragg and George B. Wragg.

This cause coming on further to be heard upon the report of the sale filed herein by the Special Master, the motion of the plaintiff for confirmation thereof, and upon the exceptions thereto filed by the defendants; now come the parties, and upon consideration thereof, the Court having indicated that in its opinion the bid of the plaintiff of $2,500.00 as shown by said report was inadequate, the plaintiff, in open Court, and by leave of the Court, voluntarily increased its bid to the sum of $4,500.00, which amount the Court finds to be fair and reasonable, and probably materially more than said property would bring at public sale. The Court is, therefore, of the opinion that said amended bid or offer is fair and reasonable and should be accepted and approved, and that a re-advertisement and re-sale of said property would not result in a better offer, and would be a useless expense, and is therefore unnecessary.

It is, therefore, Considered, Ordered, Adjudged, and Decreed that the exceptions to the Master's report, in view of the increased bid of the plaintiff for said property, are not well taken and are hereby separately and severally overruled, dissolved, and held for naught.

It is, further, Considered, Ordered, Adjudged, and Decreed that Eugene Ballard as Special Master be and hereby is authorized, empowered and directed to make, execute, acknowledge, and deliver to the plaintiff a deed conveying to it the following described real property, to-wit:

The West half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, in Elmore County, Alabama; containing in the aggregate 140 acres, more or less;
37 subject, however, to that certain right of way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by The Federal Land Bank of New Orleans;

together with all of the right, title, claim, and interest which the defendants Mirmie Reese Richardson Wragg and George B. Wragg, and each of them, have or had in and to said property at the time of the execution of said mortgage.

And it being made to appear to the Court, and the Court finds, that the amount of the debt due by the defendant Minnie Reese Richardson Wragg to the plaintiff, for which said mortgage was given to secure, amounts, with the interest thereon to this date, to the sum of $4,836.99, against which the amount of said bid, after deducting therefrom the taxable costs and expenses in this proceeding, which the Court finds amount to the sum of $206.99, and is taxed against the defendant Minnie Reese Richardson Wragg, should be applied as a credit on said mortgage indebtedness, leaving a balance due by the said Minnie Reese Richardson Wragg to the plaintiff of the sum of $543.98.

And the plaintiff having moved the Court for a deficiency judgment against the said Minnie Reese Richardson Wragg therefor, it is, therefore, further Considered, Ordered, Adjudged, and Decreed that the plaintiff, The Federal Land Bank of New Orleans, have and recover of the defendant Minnie Reese Richardson Wragg the said sum of $543.98, for which execution may issue.

It is, further, Considered, Ordered, Adjudged, and Decreed that the defendants forthwith vacate and surrender

possession of said property to the plaintiff or its authorized representative or agent, and, failing so to do, plaintiff may apply to this Court for a writ of assistance, or such other order or decree in the premises as may be deemed necessary.

Done, this the 21 day of April, 1938.

C. B. KENNAMER,
U. S. Judge.

38 EX. "D".

Copy Copy

Real Estate Purchase Contract.

Farm No. 82753

April 3, 1939

To *The Federal Land Bank of New Orleans*

I, (whether one or more) *S. P. Storrs*, hereby offer to purchase of *The Federal Land Bank of New Orleans* hereinafter called the Seller, as a tract and not the acre, the following described real estate, situated in the County of Elmore, State of Alabama, to-wit:

West half of Northeast quarter and Northeast quarter of Southwest quarter; North half of Southeast quarter of Southwest quarter; all in Section 23, Township 18, Range 17, less and except rights of way heretofore granted to the Southern Natural Gas Corporation and Elmore County; also less and except 2 acres lying South and East of the road in the Southeast corner of West half of Northeast quarter of Section 23, Township 18, Range 17.

containing *138* acres, more or less; subject to all right of ways, leases, easements, or servitudes, if any; and less and except one-half interest in such minerals and mineral rights in and under the above property as may be owned by the Seller, it being understood and agreed that the Seller is to convey to me only one-half of such minerals as may be legally vested in the Seller.

I hereby agree to pay the Seller for the above described real estate the sum of *Three Thousand Five Hundred and No 100* Dollars ($3,500.00), payable as follows:

$ *100.00* cash herewith.
$..... cash on.....
$ *100.00* on the *1* day of *January*, 1940
$ 500.00 on the .. day of March, 1940
$..... on the .. day of ....., 19..
$..... on the .. day of ....., 19..

Interest at the rate 5% per annum on the unpaid purchase price from the *15* day of *March*, 1940, shall be paid at the maturity of the first installment. Thereafter interest at the rate of 5% per annum on each maturing installment and on the unmatured balance of the purchase price shall be paid on the maturity dates set out above.

39 All of the above annual payments, including both principal and interest, unpaid when due shall thereafter bear interest at the rate of 6% per cent per annum until paid.

When the purchase price has been paid down to $2,800.00, and all interest due has been paid and all other agreements contained herein have been faithfully performed, the Seller will execute to me a deed to the land described herein retaining a vendor's lien for that part of the purchase price which remains unpaid, and at that time and

simultaneously therewith to evidence and secure the purchase price still unpaid I will execute a note payable in *20* equal principal installments to said Seller, the first installment maturing on the *15* day of *September*, 19*40*, and one on the same day and month each year thereafter, totalling the amount required to complete said purchase price, and a first mortgage or deed of trust conveying the lands described herein and containing covenants and agreements then in common usage by Seller in the sale of its lands. Said note shall bear interest at the rate of 5% per annum for amounts not in default, and 8% per annum for all amounts, including both principal and interest in default from date of default. I do further agree to pay all costs and expenses, including revenue stamps, incident to the execution and recordation of the mortgage or deed of trust.

I further understand and agree that:

(1) Any check or money order accompanying this agreement may be immediately collected by the Seller with the understanding that the deposit of such checks or money orders for collection shall not be considered as an acceptance of this offer. In the event this offer is not accepted the amount so collected is to be promptly returned, without interest.

(2) It is understood and agreed that this contract and the right to purchase the land described herein are not transferable, except with the written consent and approval of the Seller.

(3) The Seller will deliver possession of the above described real estate to me on or before the *15* day of *March*, 19*40*, unless occupants refuse to vacate, in which event the

Seller will promptly undertake to secure possession, if possible, resorting to legal action if necessary.

(4) I will assume and agree to pay all taxes and assessments against the property described herein for 1940 and subsequent years; and if said lands are assessed with other lands and the Seller pays the taxes on the entire assessment or on any part of the above described land, then I agree to reimburse the Seller in an amount sufficient to pay that part of the taxes properly chargeable to the land herein described.

(5) Immediately upon the Seller's acceptance of this offer, I agree to obtain and pay for fire and tornado insurance in the Seller's name on all buildings now situated on or to be erected on this land, in amounts and with companies satisfactory to the Seller, and to maintain said insurance for the life of this contract; should I default in this covenant, or should I ever fail to pay any taxes or other charges herein stipulated, the Seller is hereby authorized at its option to effect such insurance or to pay such taxes or other charges, and such advances are to be due and payable immediately and bear 6% interest from the date advanced until paid.

(6) I hereby agree that I will take good care of said real estate, and will not commit waste or allow waste to be committed on same, and will cause same to be worked and cultivated in a proper and farmer-like manner at all times; further, I will not cut or remove any timber except for ordinary farm purposes; and further I will keep the houses, fences, ditches, terraces and other improvements on said land in good condition and repair at all times, whether such improvements are now existing or hereafter constructed on said land.

(7) I understand that no oral or written representations with reference to the above described real estate, which are not herein set forth, shall be binding on the Seller. I have personally inspected the above described real estate, and make this offer solely on the basis of my own judgment as to the amount of and the present condition of the property.

(8) If the above described property is situated in the State of Alabama, I understand that the sale will be made subject to the statutory right of redemption following foreclosure, if any exists.

(9) There are no other conditions or agreements except as follows:

41 The 1939 rents are to be reserved by the Seller.

(10) Should I fail or refuse to perform each and every term and obligation of this contract, then the Seller, at its option, shall have the right to immediately cancel this contract and to retain the cash paid hereunder as liquidated damages to cover the expense of negotiating this sale with me, of properly cancelling the same, of negotiating the resale of the property to a third person and the loss of revenue suffered by it due to the withdrawal of the property from market because of this contract; or, in the alternative the Seller shall have the option to declare all of the foregoing amounts due and payable and stand on this contract and enforce it specifically. In the event this contract is placed in the hands of an attorney for collection, I agree to pay a reasonable attorney's fee; and do hereby waive all exemptions as to personalty as provided for by the laws of the State.

(11) This offer to remain irrevocable until midnight of the thirtieth day after date hereof, excluding the day

of the date of this instrument; acceptance by the Seller to be evidenced by a written notice mailed to my address as given below within the time specified above.

S. P. STORRS,
Purchaser.

Address:
Rt. 3, Wetumpka, Alabama.

Witness:
PAUL H. MARTIN.

.....
Purchaser.

Address:
.....

Witness:
.....

The offer set forth above to purchase the real estate described therein is hereby accepted without change.

Witness the signature and seal of *The Federal Land Bank of New Orleans* by its *Vice-President*, duly authorized, this the.....day of....., 19..

THE FEDERAL LAND BANK
OF NEW ORLEANS,
By.....
Vice-President.

Received Jun. 28, 1940. Mail Room.

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42 (Title Omitted.)

It Is Agreed that this cause be submitted for decree, to the Honorable T. A. Murphree, United States District

Judge, upon the record and the verified petition of Minnie Reese Wragg and the verified answer of the Federal Land Bank of New Orleans.

This the 6th day of July, 1940.

WALTER J. KNABE,
Attorney for Petitioner.
STEINER, CRUM & WEIL,
Attorneys for Federal Land
Bank of New Orleans.

Filed July 6, 1940.

OPINION.

43 (Title Omitted.)

The petitioner on the 15th day of October, 1934, purchased the farm involved in this case from the Federal Land Bank of New Orleans, executing her mortgage in part payment of the purchase price. The mortgage falling in default, the Federal Lank Bank filed a bill in Equity to foreclose the mortgage on February 4th, 1937. After this proceeding had been pending for some months, petitioner, to avoid a decree of foreclosure thereon, filed her petition for relief under Section 75 of the Bankruptcy Act and obtained a stay of foreclosure proceedings. The case was duly referred to a Conciliation Commissioner who reported that petitioner's proposal "does not include an equitable and feasible method of liquidating the claim of the secured creditor . . ." and recommended that same be rejected.

On January 4th, 1938, the Court confirmed the report and recommendation of the Conciliation Commissioner, and made an order dismissing the petition and holding that petitioner was entitled to became a voluntary bankrupt

under the General Bankruptcy Law. The order of dismissal becoming final fifteen days after date, the Federal Land Bank proceeded to revive and pursue the foreclosure preceedings in the Equity Court to a foreclosure decree and sale by a Special Master.

More than two years later, viz:, March 11th, 1940, petitioner, relying on Section 2, Sub-division 8, of the Chandler Act, conferring upon Courts of Bankruptcy the broad power "to close . . . ; and reopen estates for cause shown," filed this petition praying that the original proceedings under Section 75 be reopened and revived and that she be granted the benefits of the Frazier-Lemke Act. The Federal Lank Bank resists this petition on the ground that after the order of dismissal, it foreclosed the mortgage and re-sold the property to another party. It further
44 urges that the Bankruptcy Court has lost its jurisdiction because of the decree of dismissal and that petitioner herself is guilty of laches and is now estopped from asserting any rights under the farm-debtor proceedings.

Petitioner conceives that under the decision of the Supreme Court in the case of *John Hancock Mutual Life Insurance Company v. Bartels*, 60 Supreme Court 221, 308 U. S. 180, upon the failure to work out a composition with her creditors, she had a right to be adjudicated a bankrupt under Sub-division (s) of Section 75, and that she was entitled after such adjudication as a matter of right to all the benefits thereunder including "a stay of all proceedings . . . . for a period of three years." Undoubtedly the *Bartels* case so holds, but the question now raised does not involve the correctness vel non of the order of dismissal of January 4th, 1933. The order of January 4th, 1938, specifically omits any ruling on the question of whether the debtor is a "farmer" or not within the meaning of the law. There is no adjudication by that order on petitioner's status

as a "farmer," and in view of what is said hereafter, it is unnecessary to decide this question in order to make a proper disposition of the case.

Apparently, the petitioner bases her right to re-instatement in part, at least, on the provision of Section 75 (s) requiring all cases dismissed because of the first act being held unconstitutional, to be re-instated. The answer to this contention is that this case was not dismissed for that reason. We have found no other mandatory provision relating to re-instatement.

The rights of Courts of Bankruptcy to re-open and re-instate cases closed improvidently or before a full administration thereof has long been recognized and practiced. There are three essential elements on which such orders must be based. There must be a seasonable and diligent application. There must be good cause existing justifying the re-opening of the case in the sound discretion of the Court: The Court must be satisfied that no intervening rights have vested which it would be inequitable
45 and unjust to disturb. *Wayne Gas Company v. Owens Company*, 300 U. S. 131, 81 L. Ed. 557.

Petitioner does not set forth or offer any new or changed condition or proposal except as she avers:

"Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75."

The Court is of the opinion that petitioner has not met the requirements laid down by *Wayne Gas Company v. Owens Company, supra;* and that her petition should therefore, be dismissed.

A consideration of the following cases lends further support to this view.

It was held in the case of *Leinweber v. Federal Land Bank*, post, that under the mandatory re-instatement provisions of the Second Frazier-Lemke Act, petitioners were required to act *promptly*. Where the proceedings were dismissed on June 28th, 1935, on the ground of unconstitutionality and the petitioner delayed until April 3rd, 1937, to file his application for re-instatement, the Court refused to reopen the case.

"The petitioner has failed to bring his case within the amendment of August 28, 1935, which permitted him to petition for reinstatement of his application only in case he acted *promptly*. The statute provides that "all cases that have been dismissed * * * shall be promptly reinstated * * *." While this command is directed to the Court rather than to the debtor or petitioning creditors, it is obvious that a Court can make no such adjudication against the debtor's objection. The Court may only act upon the application of a suitor (either debtor or petitioning creditors). Hence, we conclude that the word "*prompt*" applies to the Court and to the debtor in voluntary proceedings. A debtor who inexcusably delays will defeat his right to relief. Stronger is the case where the facts which establish laches also make out an estoppel."

Leinweber v. Federal Land Bank of St. Louis, Mo., 95 Fed. (2d) 240.

It was held in *Massey v. Farmers National Trust Company*, 94 Fed. (2d) 531, that a case should not be reopened where it appears the debtor is beyond all reasonable hope of financial rehabilitation and the proceedings can have no effect beyond postponing inevitable liquidation, and the proceedings should be halted at the outset.

46 It appears that in the case at bar, the rights of third parties have intervened, and that the Equity Court has acted at a time when it had full jurisdiction and full right to proceed. In the case of *Miller v. Hatfield*, 42 A. B. R. (N. S.) 414, 111 Fed. (2d) 28, the Court said:

"The question for decision is whether the orders of September 27 and November 8, 1937, are of such finality as to prohibit the conciliation commissioner from granting a rehearing. There is some conflict of opinion in regard to the power of a referee in bankruptcy over his own orders, but we believe the correct rule as applied to farmer-debtor proceedings in that the conciliation commissioner has the same power to vacate his order as has a Court during the term and as the Bankruptcy Court has no term, the conciliation commissioner has the power to vacate any order entered during the course of the proceedings *unless rights have intervened which it would be inequitable to disturb.* Re Pottasch Brothers Company (C. C. A., 2nd Cir.), 30 Am. B. R. (N. S.) 225, 79 F. (2d) 613.

This conclusion is not in conflict with International Agr. Corp. v. Cary, supra, in which case the order involved had been entered by a predecessor referee, the estate closed and no action taken to vacate it until two years had expired.

Appellant's objection to the order of sale was substantially a petition for rehearing on the two provisional orders and in our opinion, *no intervening rights appearing and diligence being shown*, the conciliation commissioner, upon the application was authorized to, and should have, granted a rehearing on the merits . . . . " (Italics supplied.)

The Supreme Court of the United States recently divided on a question very much similar to the one raised by petitioner's application for reinstatement, in *Union Stock Land Bank of Detroit, v. Byerly*, 42 Am. B. R. (N. S.) 402, 60 S. St. Rep. 773. However, in both the majority and in the dissenting opinions, the Justices recognized that the intervening rights and equities of all parties concerned with the property should be given consideration and effect. Quoting from the dissenting opinion of Justices Black, Douglas and Murphy:

"Under disposition of the farmer's petition, he was entitled to the protection and benefit of the Act, and the Bankruptcy Court had exclusive jurisdiction of his property. Dismissal of the proceeding did not constitute its final disposition where reinstatement was available. Certainly, this must hold true at least for the period of time after dismissal during which the farmer had a statutory right to appeal from the District Court's action. Otherwise, even appeal might be wholly unavailable and futile. When a Court of bankruptcy reinstates a case previously retired from the docket, as this farmer's case was reinstated, the Court reconsiders the cause on the
47 merits upon the original as well as any supplemental petitions unless rights have *'intervened which would render it inequitable to reconsider the merits.' Wayne Gas Company v. Owens Co.*, 300 U. S. 131, 138, 33 Am. B. R. (N. S.) 1, 7. *We find no intervening equities here.*" (Italics supplied.)

"So here, as in the Wayne case, State Court proceedings subsequent to dismissal, but while further proceedings could be had in bankruptcy, did not divest the debtor of his property; there 'was no abuse of sound discretion in granting the motion (for reinstatement) and reconsidering the cause'; the District Court in bankruptcy had 'the power for good reason, to revise its judgment (of dismissal and to reinstate) upon seasonable application and before

rights * * * * (had) vested on the faith of its action.' Id., 137, 138, 33 Am. B. R. (N. S.) at pages 6 and 7. And its general power to do so at least during the period allowed for taking an appeal, was reinforced by recognition of the specific statutory right of reinstatement, in the amended section 75 (s), which sprang into being only two days after dismissal of this farmer's petition. Paralleling the situation presented by the Wayne case, not only was the mortgagee-purchaser here a party to the 75 proceeding, but the State Court itself may be said to have acted with knowledge that the dismissal—of which it was notified—did not necessarily represent the last step in the Federal Court proceeding. Cf. Id., 135, 33 Am. B. R. (N. S.) at page 5:

"Here, the only asserted rights which intervened against this farmer-debtor were not those of a bona fide purchaser. The purchaser was the mortgagee who was a party to the Section 75 proceeding and who relied—at least in part—on an order of the Bankruptcy Court admittedly erroneous because contrary to the Frazier-Lemke Act, and rendered at the mortgagee's instigation. Therefore, the mortgagee-purchaser is not entitled to rely upon the status acquired by it in the State Court after dismissal 'as precluding further consideration of the petition' for composition. Cf. Id., 135, 33 Am. B. R. (N. S.) at page 5."

An order dismissing the petition will be entered.

This the 5th day of August, 1940.

T. A. MURPHREE,
United States District Judge.

PROCEEDINGS UNDER SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED.

48 In the District Court of the United States for the Northern Division of the Middle District of Alabama.

In the Matter of
Minnie Reese Richardson Wragg, Debtor.
No. 8553.

This cause coming on to be heard upon the petition of the Debtor to re-open proceedings under Section 75 of the Bankruptcy Act as amended, and the answer of the Federal Land Bank of New Orleans thereto; together with agreement that said matter be submitted upon the record and the verified petition of the debtor and verified answer thereto; and the parties being present by counsel; and it appearing that the said proceeding under Section 75 of the Bankruptcy Act was instituted by the petitioner on October 16, 1937; and it further appearing that on January 4, 1938, the Court entered an order approving the report of the Conciliation Commissioner on the proposal of the Debtor to the creditors as not being equitable and feasible and recommending that same be not approved, and allowing petitioner fifteen days, at her request, in which to become a voluntary bankrupt under the General Bankruptcy Law as amended, and if such action was not taken, that the original petition and all proceedings thereunder to stand dismissed; and it further appearing that such action was not taken; and the matter being duly presented by counsel and considered by the Court, and it appearing that said proceedings should be dismissed in accordance with the written opinion handed down by the Court:

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the petition of Minnie Reese Richardson Wragg,

Debtor, to re-open the above proceedings be and the same is hereby denied, and that the proceedings herein be and the same are hereby dismissed.

This the 6th day of August, 1940.

T. A. MURPHREE,
United States District Judge.

Filed Aug. 8, 1940.

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49 APPEAL.

In the District Court of the United States for the Northern Division of the Middle District of Alabama.

In the Matter of:
Minnie Reese Richardson Wragg, Farm Debtor.

Now comes Minnie Reese Richardson Wragg and appeals from that certain judgment rendered in the above styled cause dated August 6, 1940, and filed August 8, 1940, same being signed by Judge T. A. Murphree, said appeal being taken to the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

MINNIE REESE RICHARDSON WRAGG.

WALTER J. KNABE,
Attorney.

Filed Sept. 5, 1940.

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50 APPEAL BOND.

(Title Omitted.)

State of Alabama,
Montgomery County.

Know All Men By These Presents: That we, Minnie Reese Richardson Wragg, principal and C. S. Richardson, George B. Wragg, sureties are held and firmly bound unto O. D. Street, Jr., as Clerk of the United States District Court for the Northern Division of the Middle District of

Alabama in the sum of Two Hundred Fifty and No/100 ($250.00) Dollars to be paid to the said O. D. Street, Jr., as Clerk or his successor in office, to which payment well and truly to be made, we bind ourselves and our heirs, executors, administrators jointly and severally by these presents.

Sealed With Our Seals and dated this 5th day of September, 1940.

The condition is such that whereas the above named Minnie Reese Richardson Wragg has prosecuted an appeal to the United States Circuit Court of Appeals to reverse the judgment rendered in the above entitled cause by his Honor T. A. Murphree, United States District Judge, under date of August 6, 1940 and filed in the Office of the Clerk of the District Court of the United States for the Northern Division of the Middle District of Alabama at Montgomery, Alabama; now therefore if the above named Minnie Reese Richardson Wragg shall prosecute said appeal to effect and answer all damages and costs, if she fails to make good her plea, then the above obligation to be void, else to remain in full force and effect.

MINNIE REESE RICHARDSON WRAGG. (L. S.)
C. S. RICHARDSON. (L. S.)
GEO. B. WRAGG. (L. S.)
OSCAR ANDERSON. (L. S.)
ARTHUR JACKSON. (L. S.)

51

Witness:
EFFIE T. GULLEDGE,
EFFIE T. GULLEDGE,
EFFIE T. GULLEDGE,
SALLIE FLOWERS.

Approved Sept. 23, 1940.

O. D. STREET, JR.,
Clerk.

Filed Sept. 5, 1940. O. D. Street, Jr., Clerk, by Annie Schoolar, Deputy.

State of Alabama.
Montgomery County.

I, Oscar Anderson, being duly sworn, depose, and say that I am worth the sum of Two Thousand Dollars ($2,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution and sale under the laws of the State of Alabama, hereby waiving my rights of exemption so far as the liability on this recognizance is concerned.

OSCAR ANDERSON,
(Surety.)

19 South Hillard St.
Tel. Cedar 3896-R.
Montgomery, Ala.

Subscribed and sworn to before me this 21 day of September, A. D. 1940.

SALLIE FLOWERS,
(Seal) Notary Public.

My commission expires February 25, 1942.

I, Arthur Jackson, being duly sworn, deposes and says that I am worth the sum of Two Thousand Dollars ($2,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution and sale under the laws of the State of Alabama, hereby waiving my rights of exemption so far as the liability of this recognizance is concerned.

ARTHUR JACKSON,
(Surety.)

438-B. St. John St.,
Cedar 5678,
Montgomery, Ala.

Subscribed and sworn to before me this 21 day of September, A. D. 1940.

SALLIE FLOWERS,
(Seal) Notary Public.

My commission expires February 25, 1942.

52 TAX ASSESSOR OF MONTGOMERY COUNTY.

John J. Flowers
Tax Assessor

Montgomery, Alabama.
September 16, 1940.

To Whom It May Concern:

This is to certify that the Tax Rolls of Montgomery County show Real Estate Assessed Value $4,800.00 under the joint heading Coralye S. Richardson and Minnie Reese Wragg.

JOHN J. FLOWERS,
Tax Assessor, Montgomery
County, Alabama.

Sworn to and subscribed before me this the 16th day of September 1940.

LOUISE S. CHAMPION,
(Seal) Notary Public.

PETITION FOR EXTENSION OF TIME FOR FILING RECORD ON APPEAL AND DOCKETING ACTION.

53 (Title Omitted.)

Now Comes, Minnie Reese Richardson Wragg, Farm Debtor and respectfully petitions this Honorable Court to

extend the time for filing the record in this case on appeal and docketing the action, and for reasons assigns the following:

1. Petitioner's inability to file a better bond caused a delay in preparing the record, as it was not desired to prepare the record if the bond could not be made.

2. It is the intention of attorneys representing the Federal Land Bank and your petitioner to shorten the record, and it has not been feasible for the attorneys to complete their work; wherefore petitioner prays that the time for filing the record on appeal and docketing the action be extended for an additional forty days.

Respectfully submitted,
WALTER J. KNABE,
Attorney for Minnie Reese Richardson Wragg.

ORDER.

The foregoing matter having been considered and the Court being of the opinion that same should be granted, the time for filing the record on appeal and docketing the action in the above matter is hereby extended for *30* days additional, said period to begin at the expiration of the first forty days provided by statute.

T. A. MURPHREE,
Judge, Uinted States District Court.

Filed Oct. 15, 1940.

54 In the United States Circuit Court of Appeals for the Fifth Circuit.

In Re:
Minnie Reese Richardson Wragg,
Appellant.

Now comes the Appellant and assigns the following errors:

1. The District Court erred in rendering its decree dated January 4, 1938. (R. . .)

2. The District Court erred in holding that the Farm Debtor was not entitled to amend her petition in order to obtain the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of January 4, 1938, R. . . .)

3. The District Court erred in denying to the Farm Debtor the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of January 4, 1938, R. . . .)

4. The District Court erred in its decree of January 4, 1938, by dismissing Farm Debtor's original petition. (R. . . .)

5. The District Court erred in rendering its decree of August 6, 1940. (R. . . .)

6. The District Court erred in denying Farm Debtor's petition to reopen and reinstate cause. (R. . . .) Decree of Aug. 6, 1940.)

7. The District Court erred in dismissing Farm Debtor's petition to reopen and reinstate cause. (R. . . .) Decree of of Aug. 6, 1940.)

8. The District Court erred in denying Farm Debtor's petition to refile Farm Debtor's proceedings. (Decree of August 6, 1940. R. . . .)

9. The District Court erred in its decree of August 6, 1940, in dismissing petition to refile Farm Debtor's proceedings. (R. . . .)

10. The District Court erred in denying to the Farm Debtor the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of August 6, 1940. R. . . .)

WALTER J. KNABE,
JACK CRENSHAW.

Filed Nov. 11, 1940.

CERTIFICATE.

United States of America,
Middle District of Alabama.

I, O. D. STREET, JR., Clerk of the United States District Court, Middle District of Alabama, do hereby certify that the foregoing pages numbered one to fifty-four, both inclusive, contain a full, complete, true, and perfect transcript of the proceedings on appeal in the case of Minnie Reese Richardson Wragg, Farm Debtor, in proceedings under Section 75 of the Bankruptcy Act, No. 8553 of the docket of said Court.

Witness my hand, and the seal of said Court in the City of Montgomery, Alabama, on the 11th day of November, 1940.

O. D. STREET, JR.,
Clerk, United States District Court, Middle District of Alabama.

(Seal)

[fol. 57] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 26, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

On this day this cause was called, and, after argument by Jack Crenshaw, Esq., and Walter J. Knabe, Esq., for appellant, and Benj. P. Crum, Esq., for appellee, was submitted to the Court.

[fol. 58] OPINION OF THE COURT—Filed February 25, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor, Appellant,

versus

FEDERAL LAND BANK OF NEW ORLEANS, Appellee

Appeal from the District Court of the United States for the Middle District of Alabama

(February 25, 1942)

Before Foster, Hutcheson and Holmes, Circuit Judges

HOLMES, Circuit Judge:

In 1934 appellant mortgaged her farm property in Alabama to the appellee. Nothing having been paid on the mortgaged debt in 1937, the appellee sought and obtained a decree of foreclosure in the federal district court, and a

special master was appointed to sell the land. Before the sale, appellant filed a petition under Section 75 of the Bankruptcy Act [1] for the composition and extention of her debts. [fol. 59] Appellee rejected the offer, and filed objections to its confirmation. The district court sustained the objections on the ground that the proposal was not a fair, equitable, and feasible method of financial rehabilitation of the debtor. The court denied appellant's motion for leave to amend and pray adjudication as a bankrupt under subsection (s) of the Act, but granted fifteen days in which to file a voluntary petition in bankruptcy.

Appellant took no further action, and the proceedings were dismissed. Leave to appeal to this court in forma pauperis was denied on the certificate of the district judge that, in his opinion, the appeal was not taken in good faith. 95 F. (2) 252. Certiorari was denied. 305 U. S. 596. The special master was directed to execute the prior decree of foreclosure. The bank became the purchaser, and the sale was confirmed on April 21, 1938. On April 3, 1939, the bank contracted to sell the property to a third party, delivered possession thereof, and was paid a part of the purchase price.

On December 11, 1939, the Supreme Court rendered its decision in the case of *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, holding the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings for adjudication under subsection (s), supra. On March 11, 1940, appellant filed a petition in the court below to reinstate and reopen the proceedings under Section 75 of the Act, or, in the alternative, to permit her to refile her petition and schedules, claiming that her said proceedings were improvidently closed and that no intervening rights of innocent third parties had become vested. The petition was dismissed, and this appeal was then brought.

[fol. 60] A bankruptcy court has the power, in the exercise of its sound discretion, to revise its judgments upon seasonable application therefor, although the time prescribed for appeal therefrom has expired, if no intervening rights have become vested on the faith of its action. *Wayne Gas Co. v.*

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[1] 11 U. S. C. A., Sec. 203.

Owens Co., 300 U. S. 131. Relying upon this principle, appellant claims that the petition for reinstatement was seasonably brought, being within three months of the Bartels decision; that no intervening rights had become vested, because the two-year statutory period for redemption under Alabama law had not elapsed; and that appellant was therefore entitled, apparently as a matter of right, to the reinstatement of her original proceedings, or to be granted leave to refile the proceedings.

Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court.[2] The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.

The petition for reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession [fol. 61] for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase

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[2] Wayne Gas Co. v. Owens Co., 300 U. S. 131; Union Land Bank v. Byerly, 310 U. S. 1.

price of the property with interest, costs, and the reasonable value of improvements.[a]

In view of these and other circumstances disclosed by the record, we think the judgment dismissing the petition was within the sound discretion of the court below. The judgment is

Affirmed.

[fol. 62] JUDGMENT

Extract from the Minutes of February 25, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Minnie Reese Richardson Wragg, debtor, and the sureties on the appeal bond herein, C. S. Richardson and George B. Wragg, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

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[a] Title 7, Sec. 732, Code of Alabama 1940; Morrison v. Formby, 191 Ala. 104, 67 So. 668; Upchurch v. West, 234 Ala. 604, 176 So. 186.

[fol. 66] ORDER DENYING REHEARING

Extract from the Minutes of March 24, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3048)

FILE COPY

Office - Supreme Court, U. S.
FILED
JUN 23 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS.

PETITION FOR WRIT OF CERTIORARI

WALTER J. KNABE,
JACK CRENSHAW, *Attorneys for Petitioner.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.....

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner Minnie Reese Richardson Wragg respectfully prays for a writ of certiorari herein to review a certain final decision of the Circuit Court of Appeals of the Fifth Circuit, in the above entitled action, the opinion and decision of said court having been rendered and filed on February 25, 1942, and a petition for rehearing which was, after being entertained and considered by said Court, denied on March 24, 1942; the effect of which said decision of the Circuit Court of Appeals was that a farm-debtor whose case had erroneously been dismissed and who had filed a petition for reinstatement of her debtor proceedings in due time and before intervening rights had become vested, should be denied such reinstatement and further proceedings because of lack of allegations that a further stay of proceedings would be likely to result in her financial rehabilitation; and further holding that the

fact that debtor had been in possession of the property for several years was material in considering whether her proceedings should be reinstated and further proceedings had; the effect of the decision further was to deny farm debtor the right to refile her petition and preserve the assets of her estate, as provided by the Bankruptcy Act.

QUESTIONS INVOLVED

I.

Whether farm-debtor proceedings, dismissed by the District Court because of an erroneous construction of the law, should be reinstated on petition promptly filed after the Supreme Court of the United States had settled the law by the decision of *John Hancock Mutual Insurance Company v. Bartels*, 308 U.S. 180, 84 L. ed. 176.

II.

Whether such petition for reinstatement should be denied because the court might believe that the debtor had received the equivalent of what the act prescribed.

III.

Whether such petition for reinstatement should be denied because of the absence of an allegation that further proceedings would be likely to result in her financial rehabilitation.

IV.

Whether the rights of a third party purchasing land subject to a statutory right of redemption then outstanding, may cut off or prevent the right of a farmer-debtor to extend the time of redemption by appropriate proceedings under Section 75 of the Bankruptcy Act.

STATEMENT OF FACTS

In 1937, the petitioner Minnie Reese Richardson Wragg filed in the District Court for the Middle District of Alabama her farm-debtor petition for relief under Section 75 of the Bankruptcy Act (R. p. 4). There was pending at that time a proceeding by the Federal Land Bank of New Orleans for foreclosure of mortgage on petitioner's property. Her composition and extension proceedings were duly referred to the Conciliation Commissioner, and petitioner filed her offer of composition and extension. The Federal Land Bank rejected the offer and filed objections to its confirmation. The District Court sustained the objections to the confirmation on the ground that the proposal was not an equitable and feasible method of financial rehabilitation of the debtor. Petitioner then moved for leave to amend, and prayed adjudication as a bankrupt under Subsection (s) of the Act. The Court denied this motion, but did grant fifteen days in which she might become a voluntary bankrupt under the General Bankruptcy Law.

Petitioner did not elect to become a voluntary bankrupt under the General Bankruptcy Law, and on January 19, 1938 her proceedings were dismissed by the District Court. She attempted to appeal to the Circuit Court of Appeals for the Fifth Circuit, but leave to proceed in forma pauperis was denied (95 F. (2d) 252). Petition for certiorari was likewise denied by this Court (303 U.S. 596).

The foreclosure proceedings were thereupon completed, and foreclosure sale to the Federal Land Bank of New Orleans was confifmed on April 21, 1938.

On April 8, 1939, one S. P. Storrs, a third party, offered to purchase from the Federal Land Bank of New Orleans the property of petitioner. This offer recited an agreement to pay $100.00 cash and $100.00 January 1, 1940. The 1939 rents were reserved to the seller. The

offer was expressly conditioned on the sale being made subject to the statutory right of redemption.

The statutory right of redemption in Alabama is two years from the date of sale. This right of redemption expired either on March 12, 1940, two years from the date the sale was held, or on April 21, 1940, two years from the date of confirmation of such sale. On December 11, 1939, this Court rendered its decision in the case of *John Hancock Mutual Insurance Co. v. Bartels*, 308 U.S. 180, holding that the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings for adjudication under Subsection (s), supra. On March 11, 1940, prior to the expiration of her statutory right of redemption, and shortly after this decision became known to her counsel, petitioner filed a petition in the District Court to reinstate and reopen the proceedings under Section 75 of the Act, and grant her the relief under the supervised debt extensions authorized by said section or, in the alternative, to permit her to refile her petition and schedules. The petition expressly alleged that such proceedings had been improvidently closed and that no intervening rights of innocent third parties had become vested. This petition for reinstatement or in the alternative to refile the proceedings, was dismissed by the District Court, and petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals on February 25, 1942, rendered its decision and judgment in said cause affirming the judgment of the District Court. Petitioner properly filed petition for rehearing, which was denied by the Circuit Court of Appeals on March 24, 1942. It is to correct this decision that the present proceedings are prayed.

RULINGS OF THE COURT BELOW

The District Court in dismissing petitioner's application for reinstatement of her proceedings, rendered an opinion (34 Fed. Supp. 374) holding that the petition

was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb.

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, but assigned different reasons therefor. The Circuit Court of Appeals in its opinion held:

> "Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court. The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.
>
> "The petition for reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation

unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

REASONS FOR GRANTING

The Circuit Court of Appeals for the Fifth Circuit held, in effect, that the fact that petitioner had been privileged to retain possesion of her property for a certain period of time, approximately the relief provided by Section 75 of the Bankruptcy Act, was material in denying to her the benefits prescribed by that act. Such decision by the Circuit Court of Appeals is in conflict with the applicable decisions of this Court, and particularly the decision of this Court in the case of *Wright v. Logan*, ... U.S. ....., decided February 2, 1942.

The Circuit Court of Appeals for the Fifth Circuit held, in effect, that absence of allegation of likelihood of financial rehabilitation was sufficient to deny to the farm-debtor the relief provided by the statute, which said decision was probably in conflict with the applicable decisions of this Court, and particularly the decision of this Court in *John Hancock Mutual Insurance Co. v. Bartels*, 308 U.S. 180.

The Circuit Court of Appeals for the Fifth Circuit decided a federal question in a way probably in conflict with applicable decisions of this Court, to-wit, that a farm-debtor whose original proceedings were dismissed by the District Court under an erroneous construction of the applicable law, who filed petition for reinstatement or for the right to refile such proceedings before intervening rights had become vested, should be denied such right to refile or to reinstate, and thereby perpetuate the original error in dismissing her original proceedings.

The Circuit Court of Appeals for the Fifth Circuit by

its decision, denied to a farmer the right to file a petition and preserve the assets of the farmer's estate.

CONCLUSION

For these reasons it is respectfully submitted that this petition should be granted.

WALTER J. KNABE,
JACK CRENSHAW,
Counsel for the Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

NO. .....

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS,

On Petition For Writ Of Certiorari To The Circuit Court of Appeals of the Fifth Circuit

BRIEF IN SUPPORT OF PETITION

OPINIONS

Opinion of the District Court for the Northern Division of the Middle District of Alabama written by Judge Murphree, sitting specially, was filed August 6, 1940, and appears at pages 41 to 47 of the record. It is reported in 34 Federal Supplement 374.

The opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed on February 25, 1942. It is reported in ..... Fed. (2d) .....

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U.S.C.A., Title 28, Section 347). The judgment of the Circuit Court of Ap-

peals was entered February 23, 1942. Petition for rehearing was denied March 24, 1942. This petition was filed

STATEMENT OF THE CASE

The facts are stated in the petition. Petitioner's original proceedings under Section 75 of the Bankruptcy Act were dismissed because of an erroneous conception of the law by the District Court. Shortly after this Court settled the law in *Bartels Case*, and before any rights of innocent third parties had intervened, she filed petition for reinstatement or, in the alternative, for leave to refile her proceedings. This was denied by the District Court. On appeal the Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, holding in effect that the fact that petitioner had been in possession of the property for some years before foreclosure, and the fact that there were alleged no new facts showing a substantial probability of financial rehabilitation, required the continued denial to her of the rights extended to her by Section 75 of the Bankruptcy Law. The decision also had the effect of denying to a farm debtor the right to file farm debtor proceedings and extend the right of redemption, which right was an asset of the farmer which the Bankruptcy Act protects.

ARGUMENT

On March 11, 1940, petitioner by appropriate proceedings sought to correct the error of the District Court in denying to her relief under Section 75 (*s*) of the Bankruptcy Act.

At that time there was in effect a statute of Alabama which provided (Code of Alabama of 1923, Section 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the

> debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

This right of redemption was outstanding in the petitioner.

The District Court in denying to petitioner the relief sought, apparently did so on the theory that her petition was not filed in due time. The petition was filed very soon after this Court, in the case of *John Hancock Mutual Life Insurance Co. v. Bartels*, settled the law in her favor, so that there was no longer any possible question as to the error of the District Court in denying to her relief under Section 75. We submit that until the law had been settled by that decision it could not be said that she was dilatory in not making further efforts to correct the error of the District Court.

The Circuit Court of Appeals in its opinion concedes that the petition was filed in due time and before the rights of innocent third parties had vested. It holds, however, that the matter was then within the sound discretion of the lower court, and the petition should be denied because "at that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession for approximately a year."

Even had she been in possession of the property for five years after foreclosure, under the decision of this Court in *Wright v. Logan*,

> "Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes."

The Circuit Court of Appeals likewise held it material that her petition did not allege that her financial condition

had undergone any change or that a further stay of proceedings would be likely to result in her financial rehabilitation. This, we submit, perpetuates the original error of the District Court and is in direct conflict with the decision of this Court in *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 US. 180. In the *Bartels Case* this Court held:

> "The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor."

The third party who made the offer to purchase the property recognized in his offer that the sale, if completed, would be subject to the right of redemption provided by the statutes of Alabama. The statute then in effect provided (Code of Alabama of 1923, Section 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

The third party took with knowledge that the petitioner could file farm-debtor proceedings at any time before the expiration of that statutory period. Under the express provisions of Section 75 (n), as pointed out by this Court in *Wright v. Logan, supra*, whatever right of redemption the petitioner had was subject to administration by the Bankruptcy Court, and this section extends the period of redemption for the period necessary for the purpose of carrying out the provisions of that section. As of March 11, 1940, therefore, when petitioner applied in the alter-

native for a reinstatement of her proceedings or that the same be treated as refiled, she was clearly within her rights and clearly entitled to the relief provided by Section 75. The District Court by dismissing *in toto* her petition, and making no decision as to the alternative prayer that her proceedings be re-filed, denied to her this right under the statute. The Circuit Court of Appeals in its opinion recognized that this petition to reinstate was in the alternative to permit her to refile her petition and schedules, but affirms the decision of the lower court *in toto* without assigning any reasons for denying to her the right to refile her proceedings as of March 11, 1940. Apparently the only ground for such decision by the Circuit Court of Appeals is the statement: "The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

This statement by the Circuit Court of Appeals, we submit, overlooks entirely the effect of Section 75 (n) of the Bankruptcy Law upon the statutory right of redemption. The third party took with knowledge that there was outstanding a right of redemption which might be extended under the provisions of the Bankruptcy Act. Petitioner's right to such extension under the Bankruptcy Act was denied to her and we submit that such denial by the Circuit Court of Appeals was contrary to the decisions of this Court cited above.

Respectfully submitted,

WALTER J. KNABE,
JACK CRENSHAW,
Counsel for the Petitioner.

FILE COPY

In The Supreme Court of the United States

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS

BRIEF OF PETITIONER ON SUBMISSION ON MERITS

WALTER J. KNABE, *and*
JACK CRENSHAW, *Attorneys for Petitioner.*

SUBJECT INDEX

	Page
Opinions	1
Jurisdiction	1
Statement of the Case	2
Rulings of the Court Below	5
Specifications of Error	6
Summary of the Argument	7
Argument	8
Appendix	15

INDEX OF CASES

	Page
John Hancock Mutual Life Insurance Company v. Bartels, 308 U. S. 180	4, 8, 9, 10, 11, 12
Wayne United Gas Company v. Owens-Illinois Glass Company, 300 U. S. 131, 81 L. ed. 557	7
Wright v. Logan, ____ S. Ct. ____, 86 L. ed. Advance Sheets, (Oct. Term 1941, No. 229)	7, 8, 11, 12
Wright v. Union Central Insurance Company, 211 U. S. 273, 85 L. ed. 184, 61 S. Ct. 196, 44 Am. Bankruptcy Rep. (N.S.) 280	8

STATUTES CITED

	Page
Bankruptcy Act, Section 2 (11 U.S.C.A. Sec. 11 (a))	7
Bankruptcy Act, Section 75, Subsection (n)	7, 11, 12
Code of Alabama of 1923, Section 10140	7, 9, 11
Bankruptcy Act, Section 75, Subsection (s)	8, 9, 10, 13
Bankruptcy Act, Section 2(8) (11 U.S.C.A., Section 11(8))	10

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OPINIONS

Opinion of the District Court for the Northern Division of the Middle District of Alabama, written by Judge Murphree, sitting specially, was filed August 6, 1940, and appears at pages 41-47 of the record. It is reported in 34 Fed. Supplement 874. Opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed on February 25, 1942, and is reported in 125 Fed. (2d) 1008.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C. A. Title 28, Sec. 347). The judgment of the Circuit Court of Appeals was entered February 25, 1942. Petition for rehearing was denied March 24, 1942. Writ of certiorari was granted by this Court on October 12, 1942.

STATEMENT OF THE CASE

In October, 1937, Minnie Reese Richardson Wragg filed in the District Court for the Middle District of Alabama her farm-debtor's petition for relief under Section 75 of the Bankruptcy Act (R. p. 4). The District Judge approved the same as having been properly filed (R. p. 11), and duly referred the same to a Conciliation Commissioner. On hearing before the Conciliation Commissioner petitioner filed her offer of composition and extension, which was accepted by all of the unsecured creditors, which represented a majority in number and amount of all claims, both secured and unsecured. (R. p. 14).

The Federal Land Bank of New Orleans held a secured claim against the farmer-debtor, represented by a mortgage upon certain real estate (R. p. 8, p. 15). Although this mortgage, executed in 1934 is referred to as a purchase money mortgage (R. p. 30), it appears that petitioner had some previous connection with the property, since she received credit on the mortgage for rents for 1933, the year preceding the mortgage. This secured creditor rejected the offer of proposed terms of composition and extension. The Conciliation Commissioner reported that the proposal of the farm-debtor did not include an equitable and feasible method of liquidating the claim of the secured creditor and of her financial rehabilitation (R. p. 16). Upon such report being set down for hearing before the District Judge, the Federal Land Bank of New Orleans objected to the confirmation of the extension proposal on the ground that said proposal was not a fair, equitable and feasible method of liquidation of their secured debt, nor an equitable and feasible method of financial rehabilitation for the debtor. The District Court sustained these objections to the confirmation of the proposal.

The farm-debtor then moved for leave to amend and pray adjudication as a bankrupt under Subsection (s) of Section 75 of the Bankruptcy Law. The District Judge refused to permit her to so amend her petition in order to obtain the benefits of Subsection (s) of Section 75 of the Bankruptcy Law (R. p. 19), but granted fifteen days in which she might become a voluntary bankrupt under the General Bankruptcy Law (R. p. 19). Petitioner did not elect to become a voluntary bankrupt under the General Bankruptcy Law, and on January 19, 1938, her proceedings were dismissed by the District Court. She attempted to appeal to the Circuit Court of Appeals for the Fifth Circuit assigning as error the denial to her of the right to amend her petition in order to obtain the benefits of Subsection (s) of Section 75 of the Bankruptcy Law (R. p. 22). This appeal was taken in forma pauperis, but the District Court certified that the appeal was not taken in good faith, and leave to proceed in forma pauperis was denied (95 F. (2d) 252). Petition for certiorari was likewise denied by this Court (305 U. S. 596). The Federal Land Bank thereupon completed foreclosure proceedings. The property was offered for sale by Special Master on March 12, 1938. The Federal Land Bank bid the sum of Two Thousand, Five Hundred Dollars ($2,500.00) (R. p. 28). The District Court refused to confirm this sale on the ground that said bid was inadequate, but the Federal Land Bank increasing its bid to the sum of Four Thousand, Five Hundred Dollars ($4,500.00), the District Court confirmed the foreclosure sale on April 21, 1938 (R. p. 33-35).

On April 8, 1939 on S. P. Storrs, a third party, offered to purchase from the Federal Land Bank the property of petitioner which had been purchased by the Land Bank at the foreclosure sale (R. p. 35). This offer recited an agreement to pay One Hundred Dollars ($100.00) cash, One Hundred Dollars ($100.00) on January 1, 1940, 1939

rents being reserved to the seller. This offer expressly stated the understanding of the proposed purchaser (R. p. 39) that the "sale will be made subject to the statutory right of redemption following foreclosure, if any exists."

At that time there was in effect a statute of Alabama which provided for right of redemption by the mortgagee within two years after foreclosure sale. Two years from the date of confirmation of the sale expired on April 21, 1940. On December 11, 1939, the Supreme Court of the United States rendered its decision in the case of *John Hancock Mutual Insurance Company v. Bartels*, 308 U. S. 180, holding that the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings by a farm-debtor seeking the benefits of Subsection (s) of Section 75 of the Bankruptcy Act. On March 11 1940, prior to the expiration of her statutory right of redemption, and shortly after the Bartels decision became known to her counsel, petitioner filed a petition in the District Court for the Middle District of Alabama (R. pp. 24, 25). This petition was filed in the alternative. In its first aspect it asked that the proceedings under Section 75 of the Act be reinstated and reopened and the relief under the Supervised Debt Extension Provisions authorized by said Section be granted to her. In its second aspect she sought to refile the farmer-debtor's proceedings. The Federal Land Bank filed answer and objection to the granting of the petition in so far as it sought to reopen or reinstate the farmer-debtor proceedings (R. pp. 25, 32), setting up the previous proceedings and averring the contract or agreement to sell to S. P. Storrs. The petition for reinstatement, or in the alternative to refile the proceedings, was dismissed by the District Court (R. pp. 41-48), and petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals rendered its decision and judgment on February 25, 1942, affirming the judgment of

the District Court, and application for rehearing properly filed by the petitioner was denied by the Circuit Court of Appeals on March 24 1942.

RULINGS OF THE COURT BELOW

The District Court in dismissing petitioner's application for reinstatement of her proceedings, rendered an opinion (34 Fed. Supp. 374) holding that the petition was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb.

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, but assigned different reasons therefor. The Circuit Court of Appeals in its opinion held:

> "Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court. The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.
>
> "The petition for the reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mort-

gage and had been out of possession for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

SPECIFICATIONS OF ERROR

1. The District Court erred in not reopening and reinstating the farmer-debtor's proceedings so as to give to petitioner the relief to which she was entitled under Section 75 of the Bankruptcy Act. Petition therefor was promptly filed, and the rights of no innocent third party had intervened.

2. The District Court erred in dismissing petition to refile farm-debtor's petition.

3. The Circuit Court of Appeals for the Fifth Circuit erred in holding that a farm-debtor whose original proceedings were dismissed by the District Court under an erroneous construction of the applicable law, who filed petition for reinstatement or for the right to refile such proceedings before intervening rights had become vested, should be denied such reinstatement or the right to refile her proceedings and thereby perpetuate the original error in dismissing her original proceedings.

SUMMARY OF THE ARGUMENT

I

The Bankruptcy Court should reopen and reinstate cases closed improvidently or before a full administration thereof where application is promptly filed and no intervening rights of innocent parties have vested.

Wayne United Gas Company v. Owens-Illinois Glass Company, 300 U. S. 131, 81 L. ed. 557;
Bankruptcy Act, Section 2 (11 U. S. C. A. Sec. 11(a)).

(a) Petition filed within three months after Supreme Court of the United States rendered its decision as to proper construction of the statute was promptly filed.

(b) The unexpired statutory right of redemption is property or an interest in property which can be protected under Section 75 of the Bankruptcy Law and which should be administered under those provisions.

Bankruptcy Act, Section 75, Subsection (n);
Wright v. Logan, . . . Sup. Ct., . . . 86 L. ed. Advance Sheets 443, (Oct. Term 1941, No. 229).

(c) A third party holding a contract of sale subject to right of redemption can secure no vested rights which can deprive the farm-debtor of either the statutory right of redemption or the right to have the period of redemption extended for the period necessary for the purpose of carrying out the provisions of Section 76(n) of the Bankruptcy Act.

Wright v. Logan, supra;
Bankruptcy Act, Sec. 75, Subsection (n);
Code of Alabama of 1923, Sec. 10140.

PROPOSITION II

While the right of the Bankruptcy Court to reopen a case improvidently closed is a matter of discretion of the court, such discretion is abused by dismissal of a petition to reopen bankruptcy case which shows the plain denial to the farm-debtor of rights guaranteed to her by statute.

(a) Farmers cannot be deprived of the benefits of the Act because the court may believe that they have received the equivalent of what it prescribes.

Wright v. Logan, supra.

(b) Farmer's right to an adjudication under Section 75(s) of the Bankruptcy Act is not conditioned on a further stay of proceedings being likely to result in financial rehabilitation.

John Hancock Mutual Insurance Co. v. Bartels, 308 U. S. 180, 84 L. ed. 176, 60 S. Ct. 221, 41 Am. Bankruptcy Rep. (N. S.) 296;

Wright v. Union Central Insurance Company, 211 U. S. 278, 85 L. ed. 184, 61 S. Ct. 196, 44 Am. Bankruptcy Rep. (N. S.) 280.

ARGUMENT

In 1938, the petitioner's right to belief under the plain provisions of Subsection (s) of Section 75 of the Bankruptcy Act was denied by the District Court, apparently on the basis of the Federal Land Bank's objection that the proposal theretofore filed did not contain an equitable and feasible method for the financial rehabilitation of the farm-debtor. Her attempt to have this error corrected at that time was defeated by her inability to pay court costs and the denial to her to proceed in forma pauperis. Thereafter, in December, 1939, this Court decided the

case of *John Hancock Mutual Insurance Company v. Bartels.* This case settled any doubts as to the proper construction of Section 75(s) of the Bankruptcy Act. It was there stated that:

> "The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor."

On March 11, 1940, petitioner by appropriate proceedings sought the relief to which she was entitled and which had been erroneously denied to her by the District Court.

At that time there was in effect a statute of Alabama which provided (Code of Alabama of 1928, Sec. 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

This right of redemption was outstanding in the petitioner.

The Special Judge sitting in the District Court dismissed her petition for reopening and reinstatement, or in the alternative to refile the farm-debtor proceedings. The opinion written by the District Judge recognized the right of courts of bankruptcy to reopen and reinstate cases closed before full administration thereof, but apparently held that the petition was not properly filed and that rights had intervened which it would be inequitable to disturb. The Circuit Court of Appeals in affirming this decision,

concedes that the petition was filed in due time before the rights of innocent third parties had vested.

We submit that the decision of the District Court was plainly an abuse of discretion. The District Court had denied to petitioner the plain statutory right to a stay of proceedings under Subsection (s) of Section 75 of the Bankruptcy Act. There were assets which had not been fully administered. Section 2 (8) of the Bankruptcy Act (11 U. S. C. A., Sec. 11(8)) specifically vests in courts of bankruptcy power to "close estates whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears that they were closed before being fully administered."

While the motion to reopen under this section is addressed to the sound discretion of the Judge of the bankruptcy court, the action of the District Court may, and we submit should, be reversed where a plain abuse of discretion is shown. No more plain abuse of discretion could be shown than the denial of a statutory right where the record shows that the petition to reopen was seasonably and diligently filed and no rights had intervened which it would be inequitable to disturb.

That the record shows the petition was seasonably filed is, we submit, shown where it was filed within three months after the decision of this Court in the *Bartels Case* definitely established the farm-debtor's rights.

The Circuit Court of Appeals conceded this and likewise conceded that the rights of no innocent third party had intervened. This is likewise plainly shown by the record, for the third party's rights were expressly conditioned upon the outstanding right of redemption under the statute of Alabama. Not only did the third party make the small down payment of Two Hundred Dollars ($200.00) with knowledge of this outstanding right of redemption, but the third party took with knowledge that the

statutory right of redemption might be extended by appropriate proceedings under Section 75 of the Bankruptcy Act. To permit this right of redemption to be extinguished by a third party, would be directly contrary to Section 10140 of the Code of Alabama of 1923 and to Section 75(n) of the Bankruptcy Act and to the decision of this Court in *Wright v. Logan*.

The Circuit Court of Appeals in deciding that an abuse of discretion by the court below was not shown, was apparently impelled to this conclusion by three statements:

(1) That the petition was filed one day prior to the expiration of the statutory right of redemption and at that time appellant had been privileged to retain possession of her property for five years;

(2) That the petition did not allege that a further stay of proceedings would be likely to result in financial rehabilitation;

(3) That the third party had the right to expect to continue to enjoy the property purchased without molestation unless there was a redemption under the Alabama statute.

We respectfully submit that these three statements are directly contrary to both the spirit and the letter of Section 75 of the Bankruptcy Law and to the decisions of this Court in both *Hancock Mutual Life Insurance Company v. Bartels*, and *Wright v. Logan*. We will dispose of these three bases of the opinion of the Circuit Court of Appeals by the following references to the decisions of this Court:

(1) "Farmers cannot be deprived of the benefits of the Act because the court may believe that they have received the equivalent of what it prescribes" (Per Black, Justice, in *Wright v. Logan*.).

(2) "The subsections of Section 75 which regulate the procedure in relation to the efforts of a farmer-debtor to obtain a composition or extension contain no provision of

dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor" (Per Hughes, Chief Justice, in *John Hancock Mutual Life Insurance Company v. Bartels*, 308 U. S. 180, 184; 84 L. ed. 176, 179).

(3) "It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets subject to administration by the bankruptcy court. For 75(n) subjects all of the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court and provides that 'the period of redemption shall be extended * * * for the period necessary for the purpose of carrying out the provisions of this section" (Per Black, Justice, in *Wright v. Logan*).

There can be no doubt that if the farmer-debtor had on March 11, 1940, filed her original petition seeking the benefits of Section 75 of the Bankruptcy Act, the mere filing of such petition would have cut off any rights of the third party and she would then be plainly entitled to the full measure of the relief afforded by Congress. She had already sought those benefits and had been denied them by an erroneous ruling of the District Judge. On March 11, 1940, she sought the reopening or reinstatement of her original proceedings which had been improvidently closed and while there were still assets to be administered. Out of an excess of caution and in order to avoid any doubt, in the alternative she prayed that if she was mistaken in the form of relief and if she should refile instead of asking for reinstatement and opening of her former case, that the schedules then on file be taken as part of the petition for relief under Section 75, and offered to pay such fee or fees as might be required. Neither the District Judge nor the Circuit Court of Appeals has in any way referred to this

aspect of the petition or given any reason for denying to her the right to refile the proceedings and thus obtain the relief afforded to her by Congress.

CONCLUSION

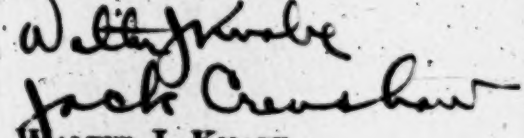
Congress intended farm debtors to have the benefits of Section 75 (s) of the Bankruptcy Act and the Supreme Court has construed the Act in favor of such debtors. Petitioner did everything in her power to secure the benefits Congress and the Supreme Court intended her to have. The Federal Land Bank is the party which caused the Court to go astray in the first instance and thereby prevented petitioner from securing those rights. Promptly upon the Supreme Court decision construing the Act as entitling petitioner to those benefits, she came before the Court of Bankruptcy, as a court of equity, with steps designed to correct the wrong and to secure the benefits which Congress intended her to have. The Federal Land Bank, we submit, is in no position to complain if petitioner is now given those benefits she was erroneously prevented from having in 1938.

If the case is reversed The Federal Land Bank loses nothing to which it was entitled originally. If the case is affirmed the Bank thereby secures advantage of the mistake for which it was responsible. The only third party is not here before the Court, for his rights were expressly subject to petitioner's right of redemption which can and should be protected under the Act.

The Bank is, therefore, in the position of asking this Court to perpetuate the error for which it was originally responsible, and forever deny to petitioner the rights to which she was entitled during the entire time. We submit that in equity petitioner should now be given the benefits which were erroneously denied to her at the instance of

the Bank and the cause reversed and the proceedings reinstated for that purpose.

Respectfully submitted,



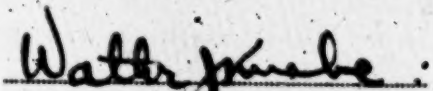
WALTER J. KNABE,
Bell Building
Montgomery, Alabama.

JACK CRENSHAW,
First National Bank Building,
Montgomery, Alabama.

Attorneys for Petitioner.

State of Alabama,
Montgomery County.

I, Walter J. Knabe, hereby certify that I have on this the 4th day of November, 1942, served a copy of the foregoing brief and argument upon Honorable B. P. Crum, Montgomery, Alabama, of counsel for the Federal Land Bank of New Orleans.



Walter J. Knabe.

APPENDIX.

Section No. 75 of the Bankruptcy Act:

(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose carrying out the provisions of this section. The words "period of redemption" wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of

creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court.

* * * * * * * *

(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a compostion and/or extension proposal, or if he feels aggrieved by the compostion and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this title. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this title: PROVIDED, That in proceedings under this section, either party may

file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

* * * * * * * *

(5) This title shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that Subsection (s) of this section was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this title shall not be grounds for denying him the benefits of this section.

(6) This title is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1942.

NO. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

vs.

FEDERAL LAND BANK OF NEW ORLEANS.

REPLY BRIEF OF THE PETITIONER

JACK CRENSHAW,
WALTER J. KNABE,
and ELMER McCLAIN,
Attorneys for Petitioner.

SUBJECT INDEX

	Page
A Preliminary Statement	1
Reply to Respondent's Proposition III	2
Reply to Respondent's Proposition I	8
Reply to Respondent's Proposition II	10
Conclusion	14

INDEX OF CASES

Arnold v. Equitable Life Assurance Society, 100 Fed. (2d) 621	8
Borchard v. California Bank, 310 U. S. 311	12
Brannan v. Adams, 80 So. 826	4
Brockett v. Brockett, 43 U. S. 238	8
Buss v. Prudential, 126 Fed. (2d) 960	8
C. F. Carpenter v. Wabash Ry. Co., 309 U. S. 23	11
Chapman v. Federal Land Bank, 111 Fed. (2d) 321	10
Conboy v. First National Bank, 203 U. S. 141	8
Crawford v. Horton, 175 So. 310	5, 6
Howell v. Federal, 92 Fed. (2d) 703	8
In re Butts, 123 Fed. (2d) 250	11
In re Kalb, 127 Fed. (2d) 509	8
In re Monjon, 113 Fed. (2d) 535	8
In re Perlman, 116 Fed. (2d) 49	11
John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. 180	11, 13
Johnson v. Davis, 60 So. 799	4
Leith v. Galloway Coal Co., 66 So. 149	4
Lemm v. Northern, 93 Fed. (2d) 709	8
Mangus v. Miller, U. S.	10
Miller v. Mangus, 125 Fed. (2d) 507	10
Mintz v. Lester, 95 Fed. (2d) 590	9
Peterson v. John Hancock Mutual Life Ins. Co., 116 Fed. (2d) 148	11
Peterson v. Holmes, 79 So. 581	4, 5
Pfister v. No. Ill. Finance Corp., U. S.	8
Summers v. Collector, 92 Fed. (2d) 819	8
Stetson v. Stindt, 279 Fed. 209	11
Wayne United Gas Co. v. Owens, 300 U. S. 131	8
Whiteman v. Tabor, 203 Ala. 496	4, 5
Wittmeier v. Cranford, 73 So. 981	4
Wright v. Logan, 315 U. S. 139	3, 12
Wright v. Union Central Life Ins. Co., 304 U. S. 502	3, 13

STATUTES CITED

Sec. 5746 Code of Alabama of 1907	3
Sec. 743 Title 7, Code of Alabama of 1940	5
Sec. 75 (n) Bankruptcy Act	6

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1942.

NO. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

vs.

FEDERAL LAND BANK OF NEW ORLEANS.

REPLY BRIEF OF THE PETITIONER

A PRELIMINARY STATEMENT

Three facts are stated in the respondent's statement of the case which are not fully sustained by the record. 1. It is stated that in 1934, the respondent, Federal Land Bank of New Orleans, sold and conveyed to petitioner the land in question and took a purchase money mortgage. While the mortgage in question is referred to as a purchase money mortgage (Record P. 25, 26), nevertheless it was executed on October 15, 1934, and it plainly appears from the record that petitioner had an interest in the property prior to that time for the petitioner was entitled to credit on this so-called purchase money mortgage for rent for the years 1933 and 1934, antedating the so-called purchase money mortgage (Rec. P. 30).

2. It is also stated in respondent's statement of the case that the petition to reopen the farmer-debtor proceedings was filed two years "lacking one day" after the title to the property had passed from petitioner. The fact is it was filed nearly six weeks prior to the expiration of two years. The petition to reopen was filed on March 11, 1940. Although the property was put up for sale on March 12; 1938, the respondent bid only $2500.00 (Rec. P. 28), and on objection of petitioner, the District Court refused

to confirm the sale at this price. The sale was finally confirmed on April 21, 1938, some six weeks later, at nearly double the original bid, or for $4,500.00 (Rec. P. 28).

3. It was further stated in respondent's brief (Respondent's brief, page 5), that the petition to reopen was filed "eleven months and eight days after Storrs had been put in possession of the property". Actually there is no statement in the record of just when Storrs went into possession. The offer to purchase (R. 35) provides that the respondent was to deliver possession "on or before the 15th day of March 1940" (R. 37) and interest on the unpaid balance was to start on that date (R. 36). This was 4 days *after* the date of the filing of the petition.

It seems significant that the respondent had in mind that the right of redemption would expire on March 12, 1940, and that the principal payment of $500.00, which with the $200.00 previously paid made the 20% of the purchase price, was not to be paid until March 15, 1940, and possession was not to be delivered to the purchaser until March 15, 1940. We believe a fair inference is that both respondent and Storrs realized that this debtor was going to do something, if she could, to get her farm back.

REPLY TO RESPONDENT'S ARGUMENT
RESPONDENT'S PROPOSITION III

The third proposition in respondent's brief is that the right of redemption in Alabama is not such a right as is included within the provisions of Section 75 of the Bankruptcy Act. This argument is here answered first because it is new and was not touched upon in Petitioner's original brief. It was not heretofore advanced by respondent, though in the District Court and in the Circuit Court of Appeals, respondent was represented by counsel living and practicing in Alabama. The fact that those most familiar with Alabama law did not advance this argument seems to us significant.

By this third proposition, the respondent asks this Court to emasculate the language of Section 75 and to hold that the ex-

press words of the statute "any right or equity of redemption" do not include the right of redemption accorded to mortgagees by the statutes of Alabama.

This Court has consistently recognized the broad purposes of Section 75 to afford relief to farmer debtors who find themselves in economic distress. The Court has consistently refused to permit this broad program of rehabilitation of distressed farmers to be emasculated by a strict construction of the law for the benefit of the creditor. "Rather the Act must be liberally construed to give the debtor the full measure of relief accorded by Congress lest its benefits be frittered away by narrow formalistic interpretations which destroy the spirit and letter of the Act." (*Wright v. Logan*, 315 U. S. 139)

This argument of the respondent is based on the assumption that the words of Section 75 "the right or the equity of redemption" apply only in those states where the right of redemption is construed to be property.

This question, we submit, is to be determined by the construction of Sec. 75, and not by the State law. The Bankruptcy statutes may regulate relationships between debtor and creditor, regardless of whether this involves the administration of "property". (*Wright v. Union Central Life Insurance Company*, 304 U. S. 502, 514, 516.

We believe, however, that an examination of the Alabama cases shows that the statutory right of redemption is "property" which can be and is administered under the Bankruptcy statutes. The early cases in Alabama, including cases in which the question was presented of whether the statutory right of redemption was subject to levy and sale upon execution held that the right was not property and therefore not subject to levy and sale. Prior to the Code of 1907, the statutory right of redemption was not assignable. By section 5746 of the Code of Alabama of 1907, the statute was amended so as to permit redemption not only by the debtor but also by a vendee of the debtor or assignee of the equity or statutory right of redemp-

tion, as well as the wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption. This amendment makes entirely inapplicable the decisions prior to the decision of *Johnson v. Davis*, 60 So. 799. In that case, it was held that under the statute as amended in 1907, the statutory right of redemption could be exercised by the trustee in bankruptcy who was an assignee.

Respondent cites the case of *Wittmeier v. Cranford*, 73 So. 981, which, following the case of *Leith v. Galloway Coal Company*, (189 Ala. 204, 66 So. 149), held that the right of redemption did not extend to an assignee of the trustee in bankruptcy. Respondent, however, does not call to the attention of the Court the later case of *Toney v. Chenault*, 204 Ala. 329, in which the Supreme Court of Alabama stated that in the case just referred to of *Leith v. Galloway Coal Co.* an erroneous construction was accorded the statute in interpreting it as limiting to the debtor only the authority to assign the statutory right of redemption and to that extent expressly overruled it.

Following the amendment by which the statutory right of redemption could not only be willed, but could be assigned and exercised by a vendee or assignee, two of the Justices of the Supreme Court of Alabama decided that the statutory right of redemption was property. *Peterson v. Holmes*, 202 Ala. 115, 79 So. 581; *Branson v. Adams*, 202 Ala. 442, 80 So. 826.

The conclusion was there reached that since the right of redemption was transferrable either before or after foreclosure as a property right that the right of redemption fell within the common definition of property as the right to possess, use, enjoy or to sell or otherwise dispose of a thing according to the will of the owner, without diminution or control save only by the laws of the land."

If this construction had been followed by the other members of the Supreme Court of Alabama, it would have rendered the statutory right of redemption subject both to taxation and to levy and sale. Also, as in the case of *Whiteman v. Tabor*, 203

Ala. 496, it was doubtful whether a wife could assign her statutory right of redemption without the husband joining therein.

Justice Mayfield, then a member of the Supreme Court of Alabama, retired from the bench and became Code Commissioner and as such wrote into the Code of 1923 for the first time the statute which now appears as Section 743, Title 7 of the Code of Alabama. Although this section expressly denominates the statutory right of redemption as a mere personal privilege and not property or property right, the logic of the conclusion of Justices Sayre and Thomas in the case of *Peterson v. Holmes*, 202, Ala. 115, is still applicable, for regardless of what the right is called, it remains a right which may be transferred by inheritance, by will or by sale; it is a right which may be exercised either by the immediate assignee or by an ultimate vendee. We suggest that what respondent deems to be a restriction of the rights of a mortgagor in Section 743 of the Alabama law is rather a protection of such rights by creating immunity from seizure of the right of redemption by his creditors through attachment, execution, or other process.

We think the decision in *Crawford v. Horton*, 234 Ala. 439, 175 So. 310, decided in 1937, while Section 743 of Title 7 was in effect, reinforces the preceding statement. In that case a bankrupt owned a right of redemption. This right was abandoned to the bankrupt by the trustee in bankruptcy, and the bankrupt sold the right of redemption. The purchaser of this right sought to redeem the property, and the holder of the property questioned the right of the purchaser to redeem. The Alabama Sureme Court held that the trustee could waive this right to the bankrupt and gave as its reason that a trustee can abandon "property" which is burdensome. Further the Court stated what constituted waiving "property" rights. While the Alabama Court does not specifically call the right of redemption "property", nevertheless it inferentially calls it property. This case incidentally involved the Federal Land Bank, respondent in this case, and apparently involved a contract of sale identical with the present contract with Storrs.

We have at some length and for the convenience of the Court given this digest of the Alabama authorities with reference to the statutory right of redemption. We submit, however, that whether the Alabama Court called the statutory right of redemption a personal privilege or a property right, it is, nevertheless, a "right of redemption" squarely brought within both the letter and the spirit of Section 75 (n) of the Bankruptcy Act.

While we feel that the case of *Crawford v. Horton*, just referred to, makes clear that the Alabama Court considers the right of redemption as property, regardless of this, Section 75 (n) of the Bankruptcy Act makes it property for the purposes of the Act. The Act reads in part:

> "75 (n) The filing of a petition shall immediately subject the farmer and all his property . . . for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in such property including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or equity of redemption . . . In all cases where . . . the period of redemption has not or had not expired . . . the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section . . ."

The Senate Committee on the Judiciary, in its report (S. R. No. 985), 74th Congress, 1st Session, P. 1, gave the following explanation of the amendment:

"This bill has for its object the clarification of Section 75, and the rewriting of subsection (s), which has been held unconstitutional, so as to conform to the decision of the Supreme Court. We shall first discuss the amendments to Section 75, other than subsection (s).

"These amendments have become necessary because of the great confusion caused by the diverse rulings of the various United States district courts, in the construction of section 75.

Some courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition, although under the law of the State, he was in possession and full control of the property, and could redeem it within the period allowed. Other courts have held that the farmer could not take advantage of the act during the period of a moratorium established by a State; while others have held that the debtor could not take advantage of the act after sale, but prior to confirmation of sale although in all of these cases, if the debtor had the money, and were in a position to pay, he could redeem and save his property.

"Obviously, these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's property and home. Other courts have held just the opposite, and have given full protection, and carried out the intent of Congress. There should be uniformity. The amendment to subsection (n) remedies this situation. In addition, subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity."

Any interpretation that the right of redemption is not included under Section 75 would render this part of the broad program for the rehabilitation of distressed farmers without meaning in the State of Alabama. Certainly Congress did not intend to extend to the farmers of other States a hope of rehabilitation, a right to an extension of the period of redemption for the length of time necessary to carry out the humane purpose of this statute, but to deny that right to the farmers of Alabama.

Petitioner feels that there is no question that she has the right to refile a petition as long as any rights remain. We have been unable to find a Supreme Court case so holding, but the Circuit

Courts of Appeal have apparently uniformly held that cases could be refiled. *Summers v. Collector*, 92 Fed. 2, 819; *Lemm v. Northern*, 93 Fed. 2, 709; *Buss v. Prudential*, 126 Fed. 2, 960; *Howell v. Federal*, 92 Fed. 2, 703.

Arnold v. Equitable Life Assurance Society, 100 Fed. (2d) 621;
In reMonjon, 113 Fed. (2) 535;
In re Kalb, Feuerstein v. Kalb, 127 Fed. (2d) 509.

RESPONDENT'S PROPOSITION I

The first proposition argued by the respondent is that the petition to reopen was an application for rehearing of the order of dismissal entered January 4, 1938, and was therefore not appealable. The cases relied upon by the respondent, are *Brockett v. Brockett*, 43 U. S., (2 Howard), 238, and *Conboy v. First National Bank*, 203 U. S. 141, which involved applications for rehearing filed after the time for appeal had expired. We are not here concerned with *rehearing* but with reopening, or, in the alternative, with the right to invoke Sec. 75 while a right of redemption exists.

This Court, in *Wayne United Gas Company v. Owens-Illinois Glass Company*, 300 U. S. 131, had presented to it a much more similar case although that case too involved an application for rehearing which was filed after the time for appeal had passed and, in fact, after an appeal had been taken and dismissed. In note 2 to the opinion in that case, it was stated that "this Court had adverted to the question without deciding it" in *Conboy v. First National Bank* (Supra). This Court held that a Court of Bankruptcy had the power for good reason to revise its judgment upon a seasonable application before rights vested upon the faith of its action.

This Court recently, in the case of *Pfister v. Northern Illinois Finance Corp.*, U. S., Nos. 26, 27, October Term, 1942, decided November 16, 1942, (leave to file petition for rehearing granted), took occasion to review both the Conboy case and the Wayne United Gas Company case.

All of those cases relied upon by the respondent involved applications for rehearing of applications to set aside a particular order or decree of the Court. There is no such application here involved. We are not asking the Court to set aside the original order of dismissal dated January 4, 1938. We are merely asking the Court to exercise the jurisdiction and duty expressly vested in it by section 2 (8) of the Bankruptcy Act to reopen the case for good cause shown, and to permit the farmer debtor to invoke the provisions of Section 75 while her right of redemption exists.

Respondent cites two cases arising under section 75 of the Bankruptcy Act, which we think are not applicable to this case. The first case, *Mintz v. Lester*, 95 Fed. (2) 590, was clearly correct. In that case, there was an order dismissing the farmer-debtor petition on December 20, 1935. No further action was taken until April 21, 1937, at which time there was a motion filed seeking a rehearing of the motion to dismiss and a reconsideration of the action of the Court in dismissing the proceedings. This motion was denied on May 10, 1937. On May 18, the debtor filed a petition for rehearing of the order of May 10, 1937, which was denied on May 20, 1937. More than thirty days after the order of May 10, 1937, the bankrupt filed a motion in the Circuit Court of Appeals praying an appeal only from the order of May 20, 1937 as set out in note 1 of the opinion, the motion for appeal read in part as follows:

> "Comes now Minnie E. Mintz, bankrupt . . . and prays that she be granted an appeal from the final order of the District Court of the United States for the District of New Mexico, denying her motion for rehearing on the motion to dismiss filed by Francis E. Lester, and George M. Clark, on December 2, 1935; and which final order of said Court was filed herein on May 20, 1937."

The right of appeal from the order of May 10, 1937, had expired and there was no right of appeal from the order of May 20, 1937 because it was merely a denial of a rehearing, which is not appealable.

The other case relied upon by the appellant is *Chapman v. Federal Land Bank*, (111 Fed. (2d) 321). The facts in that case down to the time of dismissal, are somewhat similar to those here involved, for the motion to dismiss was identical with that filed by the respondent in this case. There, as here, the farmer-debtor proceedings were dismissed because the offer did not present a feasible method of financial rehabilitation. There were two cases pending, one of them by the administrator of the farmer, in whom the right to file such proceedings was expressly vested by section 75 (r), and an identical proceeding filed by the heirs of the deceased farmer. The administrator appealed from the order of dismissal and in the decision relied upon by respondent, the rights of the administrator under section 75 were given full recognition. This being true, the proceeding of the heirs presented an entirely moot question for the relief sought had already been obtained.

We might further call to the Court's attention the fact that this Chapman case definitely recognized the error of the District Court in its original order of dismissal, thus sustaining the right of the farmer-debtor to the benefits of sub-section (s) on the ground of reasonable lack of probable financial rehabilitation. The simple distinction remains that in that case there was presented to the Court no motion or petition to reopen the proceedings under section 2 (8) of the Bankruptcy Act.

RESPONDENT'S PROPOSITION II

It is next argued that the petition to reopen was addressed to the sound discretion of the District Court under its general equity powers, not under section 2 (8) of the Bankruptcy Act. The respondent relies upon the case of *Miller v. Mangus*, 125 Fed (2) 507. The decision in that case is no longer of any help to the respondent for this Court on December 7, 1942, reversed the decision of the Circuit Court of Appeals in *Mangus v. Miller*, —U. S.—.

That the discretion of the District Court to reopen a closed estate is a matter of judicial discretion which may and should

be reversed for abuse of discretion is sustained by the case of *In re Perlman*, 116 Fed. (2) 49, cited in the respondent's brief. Respondent is wrong in stating that in the Perlman case the Circuit Court of Appeals declined to disturb the action of the District Court. Exactly the contrary result was reached. There the Circuit Court of Appeals went fully into the facts shown by the record and held that the action of the District Court was an abuse of discretion and reversed the action of the District Court.

Likewise, in the case of *In re Butts*, 123 Fed. (2d) 250, cited by the respondent, the Circuit Court of Appeals considered fully the facts, but in that case reached the conclusion that no abuse of discretion had been shown.

Such a motion to reopen a case in the Bankruptcy Court "for good cause shown" does, we submit, call for a judicial discretion, and the exercise of judicial or legal discretion is not an unbridled discretion. Any other conclusion would make the rights of farmer-debtors and other parties having business in the Bankrupt Court, depend upon the length of the chancellor's foot rather than upon the legal and statutory rights. We submit that at no time does a District Court have a discretion to act contrary to the plain terms of the statute as construed by this Court in the Bartels case. *Peterson v. John Hancock Mutual Life Insurance Co.*, (C. C. A. 8th) 116 Fed. (2d) 148; *Stetson v. Stindt*, C. C. A. 3rd, 279 Fed. 209, 212; *Winchester Repeating Arms Co.*, C. C. A. 7th, 203, Fed., 493, 494; *C. F. Carpenter v. Wabash Railway Co.*, 309 U. S., 23, 29, 84 L.ed. 558.

We, of course, concede that a motion to reopen filed under Section 2(8) of the Bankruptcy Act is not a matter of right but is addressed to the sound legal discretion of the Court. We submit, however, that no better cause for reopening can be shown than is here shown, that is, the denial to the farmer-debtor of the plain right accorded to her by the Act of Congress. This right was denied to her by the District Court under an erroneous interpretation of the law. Immediately after this Court, in the Bartels' decision (308 U. S. 180) had resolved the

conflict between the existing decisions in the Fifth Circuit Court of Appeals, and therefore immediately after her rights became definite and certain, petitioner filed her motion to reopen the case. This, we submit, was "good cause shown" and the denial of the motion was an abuse of discretion.

This, we respectfully submit, is made plain by the grounds assigned by the Circuit Court of Appeals in affirming the judgment of the District Court. The District Court, in holding that petitioner had not met the requirements of the Wayne Gas Company case, gave consideration to two things, first, that the petitioner was required to act promptly (R. p. 44), and second, the rights of a third party had intervened. The Circuit Court of Appeals, in affirming this decision, concedes, without deciding, that the petition was filed in due time and no intervening rights had become vested. (R. p. 59.)

The Circuit Court of Appeals gives weight to the following facts and as to each statement we cite the opinion of this Court with which such statement by the Circuit Court of Appeals is in direct conflict:

(a) "The petition for reinstatement was filed one day prior to the expiration of the statutory period of redemption." The farmer-debtor petition involved in *Wright v. Logan*, 315 U. S. 139, was likewise filed a day before the expiration of the right of redemption but this Court did not hold that that fact was sufficient to deny the rights given by the statute. In fact, however, the Wragg petition was not filed within one day but within 6 weeks, lacking one day of the expiration of the period for redemption.

(b) "At that time, appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage and had been out of possession approximately a year."

This Court, in both *Wright v. Logan*, 315 U. S. 139, and *Borchard v. California Bank*, 310 U. S. 311, clearly held that farmers could not be deprived of the benefits of the Act because the

Court might believe that a farmer had received the equivalent of what it prescribes.

(c) "Her petition did not allege that her financial condition had undergone any change or that a further stay of proceeding would be likely to result in her financial rehabilitation." This Court, in the Bartels case, 308 U. S. 180, at page 184, had clearly settled, we thought, that the subsections of Section 75 contained no provision for the denial to the farmer-debtor of the benefits of the statute because of the absence of a reasonable probability of the financial rehabilitation of the debtor.

(d) "The third party purchased the land, having good reason to believe the bankruptcy proceedings brought by the appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

This statement by the Circuit Court of Appeals, we submit, is in direct conflict with the decision of this Court in the first case of *Wright v. Union Central Life Insurance Company*, 304 U. S. 502, 514. It was there held: "the debtor has a right of redemption of which the purchaser is advised and until that right of redemption expires, the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor, and its power to legislate for the rehabilitation of the debtor. The person whose land has been sold at foreclosure sale and now holds a right of redemption is, for all practical purposes, in the same situation as an ordinary mortgagee in default; both are faced with the same ultimate prospect either of paying a certain sum of money or being completed divested of their land."

We think the provision for the extension of the period of redemption comes clearly within the power of the Congress under the Bankruptcy clause . . . Any purchaser at a judicial sale

must purchase subject to the possibility of the exercise of the Bankruptcy power in a manner consummate with the fifth amendment."

Here the so-called purchaser, Storrs, made a contract expressly subject to the right of redemption. (R. p. 39.) Under the above decision the provisions of Section 75 were written into that contract and the purchaser took not only with the knowledge of the statutory right of redemption but with the knowledge that such statutory right of redemption might be extended for the period necessary to carry out the purposes of the farmer-debtor law.

CONCLUSION

Petitioner feels that without question, the right of redemption in Alabama is included in the provisions of Section 75 of the Bankruptcy Act, and under the alternative averment of the petition she is entitled to the relief which she seeks.

Petitioner also feels that she is entitled to have the case reopened. The estate was not completely administered. The right of redemption was at all times an asset of value. Petitioner was entitled to the benefits of subsection *s*. The Court erroneously refused them to her. She did everything in her power to secure consideration by the Circuit Court. This was denied because the District Judge felt that her proposed plan was not feasible and that her appeal was not in good faith. There was, apparently, no question as to her lack of funds. The Court had a list of all her assets. Respondent argues that if the appeal were not perfected, it is the same as if there had been no appeal. Petitioner does not agree with this.

Without question in the broad sense, petitioner's rights were denied, at least in part, because of respondent's misleading argument to the District Court. Petitioner did everything in her power to secure her rights. She now comes in and shows that the only person who will benefit by refusal to reopen this estate will be the respondent bank which is partly responsible for

the Court's error. No rights of a third party have intervened. Storrs took under a contract which entitled him to possession four days after this petition was filed. Even if he had been in possession for some time, he nevertheless took all his rights subject to being dispossessed by exercise of the right of redemption.

Respondent's position is that it helped create the original error and that now because 2 years have elapsed, the error should be perpetuated for respondent's benefit. Petitioner submits that she has acted promptly and that no rights of a third party have intervened. Petitioner prays that her case be reopened.

Respectfully submitted,

JACK CRENSHAW,
Montgomery, Alabama.
WALTER J. KNABE,
Montgomery, Alabama.
ELMER McCLAIN,
Lima, Ohio.
Attorneys for Petitioner.

I, Walter J. Knabe, hereby certify that I have on this ..... day of Deeember, 1942, mailed, postage prepaid, a copy of the foregoing brief to Honorable Thomas Harvey Hedgepeth, 860 St. Charles Street, New Orleans, Louisiana, attorney for respondent.

.....

WALTER J. KNABE.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 172

MINNIE REESE RICHARDSON WRAGG,

Petitioner,

versus

FEDERAL LAND BANK OF NEW ORLEANS,

Respondent.

BRIEF OF RESPONDENT, FEDERAL LAND BANK OF NEW ORLEANS.

THOMAS HARVEY HEDGEPETH,
New Orleans, Louisiana,
Attorney for Respondent.

Of Counsel:
E. F. STEINER,
H. D. FINLAY, JR.,
New Orleans, Louisiana.

TABLE OF CONTENTS.

	PAGE
OPINIONS	1
STATEMENT OF THE CASE	2
RULINGS OF THE COURT BELOW	7
SUMMARY OF ARGUMENT	8
ARGUMENT	10

INDEX OF CASES.

Aetna Life Insurance Co. v. Beckman, 210 Ill. 394, 71 N. E. 452	35
Boesch v. Graff, 133 U. S. 697, 33 L. Ed. 787	14
Brockett v. Brockett, 2 How. 238, 11 L. Ed. 251	10
Butts, In Re, 123 Fed. (2d) 250	22
Chapman v. Federal Land Bank of Louisville, 117 Fed. (2d) 321	15
Chicago Joint Stock Land Bank v. McCambridge, 343 Ill. 456, 175 N. E. 834	35
Conboy v. First National Bank of Jersey City, 203 U. S. 141, 51 L. Ed. 128	11
Cramer v. Watson, 73 Ala. 127	29
Duffy, In Re, 9 Fed. Supp. 166	35
Federal Land Bank of Springfield v. Hansen, 113 Fed. (2d) 82	20
Graff, In Re, 250 Fed. 997, 163 CCA 247	22
Gray v. Union Joint Stock Land Bank of Detroit, 308 U. S. 523, 60 S. Ct. 291, 84 L. Ed. 443	15
John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. 180, 60 S. Ct. 221, 84 L. Ed. 176	15
Hardin v. Boyd, 113 U. S. 756, 28 L. Ed. 1141	14
Hinshaw, In Re, 33 Fed. Supp. 964	26
Johnson v. Davis, 60 So. 799	25, 29, 30

INDEX OF CASES—(Continued)

	PAGE
Miller v. Mangus, 125 Fed. (2d) 507	18
Mintz v. Lester, 95 Fed. (2d) 590	14
Morrison v. Federal Land Bank, 308 U. S. 524, 60 S. Ct. 292, 293, 84 L. Ed. 443	15
Newton, In Re, 107 Fed. 429, 46 CCA 339, 6 Am. Bank. Rep. 53	22
Perlman, In Re, 116 Fed. (2d) 49	23
San Pedro & Co. v. United States, 146 U. S. 120, 36 L. Ed. 911	14
Steines v. Franklin County, 14 Wall. 15, 20 L. Ed. 846	14
Suzuki, In Re, 20 Fed. Supp. 900	26
Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U. S. 131, 81 L. Ed. 557	13, 14, 19
Whiteman v. Taber, 83 So. 595	25, 28
Williams v. Williston, 315 Ill. 183, 146 N. E. 143	34
Wittmeier v. Cranford, 73 So. 981	25, 30
Wright v. Logan, ... U. S. ..., 86 L. Ed. ... (Advance Opinions 443, October Term, 1941, No. 229)	33, 36

STATUTES CITED.

Alabama Code of 1940, Title 7, Section 727	27
Alabama Code of 1940, Title 7, Sec. 732	38
Alabama Code of 1940, Title 7, Section 743	27
Alabama Code of 1940, Title 7, Section 730	28
Alabama Code of 1940, Title 47, Section 168	28
Bankruptcy Act, Section 2 (8) 11 USCA 11 (8)	9
Bankruptcy Act, Section 70, 11 USCA 110	29
Bankruptcy Act, Section 75, 11 USCA 203 (Cited repeatedly throughout brief)	2
Bankruptcy Act, Section 77B (now included in Chapter 10) 11 USCA 501, et seq.	13
Bankruptcy Act, Section 25, 11 USCA 48	24
Illinois Revised Statutes 1941, Chapter 77, Sections 18-20	34

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No. 172.

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

versus

FEDERAL LAND BANK OF NEW ORLEANS,
Respondent.

BRIEF OF RESPONDENT, FEDERAL LAND BANK OF NEW ORLEANS.

OPINIONS.

Opinion of the District Court for the Northern Division of the Middle District of Alabama written by Judge Murphree sitting specially, was filed August 6, 1940 and appears as Pages 41-47 of the record. It is reported in 34 Fed. Supp. 374.

Opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed February 25, 1942, appears at pages 57-60 of the record, and is reported in 125 Fed. (2d) 1003.

STATEMENT OF THE CASE.

The facts are not in dispute but we think a more complete statement of them than is contained in Petitioner's brief is essential.

In 1934 Respondent, Federal Land Bank of New Orleans, sold and conveyed to Petitioner about 138 acres of land in Elmore County, Alabama, and to secure the purchase price of Three Thousand Eight Hundred Fifty-Seven and No/100 ($3,857.00) Dollars, took from her a mortgage payable in annual installments over a period of twenty years, with interest at the rate of 5 per cent per annum.

In 1937, nothing having been paid on the debt, either interest or principal (except $250.00 rental which Respondent collected from tenants for 1933 and 1934 and applied on the debt as per agreement of the parties), Respondent filed its bill in the Federal District Court sitting in Equity to foreclose its mortgage. Some effort at defense was made but a decree of foreclosure was rendered ascertaining the amount of the debt and appointing a special Master to conduct the sale. The property was advertised for sale.

Whereupon on October 16, 1937 Petitioner filed her petition as a farmer debtor under the provisions of Section 75 of the Bankrutcy Act, 11 USCA 203, seeking merely an extension or composition (R. 4) and the sale of the land was, on her motion, temporarily stayed. The schedules accompanying her petition showed that she owned no property other than this land (R. 6) and that she was hopelessly insolvent. (R. 6.)

The petition was referred to a special Conciliation Commissioner, (R. 11) where proceedings, including the taking of testimony, were had in the regular way. The debtor filed an offer of composition and extension which was accepted by the unsecured creditors, but rejected by the Federal Land Bank of New Orleans, the only secured creditor. (R. 12-15.) Having secured the acceptance of her proposal by a majority in number and amount of the creditors, the debtor filed an application for confirmation thereof. After a hearing on this motion and due consideration of the evidence (not set out in the record) the Commissioner reported to the Court on December 16, 1937, recommending that the debtor's proposal not be approved. (R. 14.)

In his report the Commissioner said in part:

> "Upon consideration, it is my opinion from the testimony that the proposal of the said farm debtor does not include an equitable and feasible method of liquidating the claim of the secured creditor, and of her financial rehabilitation. The evidence further shows that the reasonable value of the land does not exceed the indebtedness secured by the mortgage on the land, and the offer to pay $125.00 per year rent for the land, which the testimony shows is less than its yearly rental value, will not give a fair return on the mortgage indebtedness during the proposed extended period." (R. 16.)

The report of the Commissioner coming on to be heard by the District Court was, in all respects, approved. (R. 18.)

At this hearing Counsel for the debtor made oral request of the Court for fifteen days within which to amend debtor's original petition and pray to be adjudged a bankrupt. The Court being of the opinion that the debtor was not entitled to be adjudicated a bankrupt under the provisions of sub-section (s) of Section 75, nevertheless allowed fifteen days within which she might be adjudicated a voluntary bankrupt under the general bankruptcy law, if she so desired, but specified that upon her failing so to do, the case would stand finally dismissed out of Court at the expiration of fifteen days. All of this is included in the Order approving the Commissioner's report. (R. 18.)

The debtor did not file any petition to be adjudged a bankrupt and at the end of the fifteen-day period the farmer debtor proceeding stood dismissed—as of January 20, 1938. The debtor attempted to appeal to the Circuit Court of Appeals in *forma pauperis*, but the District Court certified that, in its opinion, the appeal was not taken in good faith (R. 22) and leave to appeal in *forma pauperis* was denied. 95 Fed. (2d) 252. Petition for *certiorari* was likewise denied by this Court. 305 U. S. 595, 83 L. Ed. 377. Therefore, no appeal was perfected.

After the time for appeal had lapsed the District Court sitting in Equity directed its special Master to carry out the decree of sale in the foreclosure case which had been suspended during the farmer debtor proceeding. The special Master completed the sale March 12, 1938, and Respondent became the purchaser of the property.

April 21, 1938, the Court entered a decree in the foreclosure proceedings confirming the sale (some modifica-

tion in Petitioner's favor affecting the amount of the bid) and directed the special Master to execute a deed to Respondent and place it in possession of the property, which was done. (R. 33.)

April 3, 1939, more than a year after Petitioner's original farmer debtor proceeding stood dismissed and when there were, of course, no proceedings whatever pending in the Bankruptcy Court and the title to the property had passed out of the debtor and no longer belonged to her, Respondent entered into a binding contract of sale and conveyed this property to one Storrs for a consideration of Three Thousand Five Hundred and No/100 ($3,500.00) Dollars, part in cash and the balance on terms as provided in the contract. (R. 35.)

March 11, 1940 Petitioner attempted to reopen the farmer debtor proceedings by a petition filed in the District Court. (R. 24.) This was two years, two months and seven days after the dismissal and closing of the farmer debtor proceeding, two years (lacking one day) after the title to the property had passed from Petitioner, and eleven months and eight days after Storrs had been put in possession of the property under the contract of sale on which he had paid a substantial part ($700.00) of the purchase price. (R. 29.)

The only grounds alleged for reopening the case were: (1) that Petitioner's case had not been fully administered, and (2) "under the changed conditions and interpretations of said Act she is entitled to have her relief under the provisions of Section 75 of the Bankruptcy Act; that she

will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors, and if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75." The prayer was in the alternative that (1) her case be reinstated and rereferred to the Referee or Conciliation Commissioner, or (2) that she be allowed to proceed anew on the new petition with the "former schedules and information" incorporated therein by reference.

To this petition Respondent filed its verified answer (R. 25-32) setting out in detail the facts and challenging Petitioner's right to have the bankruptcy proceeding reinstated after so long a time without alleging or showing any changed circumstances or other reasons therefor especially in view of the rights of its contract Vendee, Storrs, which had vested in the *interim*.

Judge Kennamer now recused himself. The matter was submitted by agreement to Judge Murphree of the Northern District upon the record, the verified petition and the verified answer. (R. 40-41.) On August 6, 1940, Judge Murphree rendered a decree denying the petition (R. 48), the basis of his decree being set out in a written opinion. (R. 41-47.) 34 Fed. Supp. 374. It was from this decree that the appeal was prosecuted to the Circuit Court of Appeals for the Fifth Circuit. (R. 49.)

February 25, 1942 the Circuit Court of Appeals affirmed the decree of the District Court (R. 57) 125 Fed. (2d) 1003.

RULINGS OF THE COURT BELOW.

Under this heading it is said in Petitioner's brief, page 5, that the District Court declined to reinstate Petitioner's proceeding under Section 75, "holding that the petition was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb." We wish to point out that the basis for the Court's action was much broader than is indicated by this statement. In the opinion (34 Fed. Supp. 374) it is said:

> "The rights of Courts of Bankruptcy to re-open and reinstate cases closed improvidently or before a full administration thereof has long been recognized and practiced. There are three essential elements on which such orders must be based. There must be a seasonable and diligent application. There must be good cause existing justifying the re-opening of the case in the sound discretion of the Court. The Court must be satisfied that no intervening rights have vested which it would be inequitable and unjust to disturb. Wayne Gas Company v. Owens Company, 300 U. S. 131, 81 L. Ed. 557.
>
> "Petitioner does not set forth or offer any new or changed condition or proposal except as she avers:
>
> "'Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors

> and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75.'
>
> "The Court is of the opinion that petitioner has not met the requirements laid down by Wayne Gas Company v. Owens Company, supra; and that her petition should therefore, be dismissed."

We find no objection to Petitioner's statement with respect to the ruling of the Circuit Court of Appeals, except we disagree with the conclusion that it is based on "different reasons" from the District Court's decision. We think the two harmonious.

SUMMARY OF ARGUMENT.

Proposition I.

The order of the District Court of August 6, 1940, dismissing the petition to reopen the proceeding under Section 75 of the Bankruptcy Act was not appealable, and this Court should not review the action of the Circuit Court of Appeals in affirming it.

Proposition II.

Whether or not the order of the District Court denying a rehearing was properly the subject of appeal, it was correct and its affirmance by the Circuit Court of Appeals was correct.

1. The petition for rehearing, dated March 11, 1940, was addressed to the sound discretion of the District Court

under its general equity powers—not under Section 2 (8) of the Bankruptcy Act.

2. Even if the propriety of the District Court's action in denying the petition for a rehearing was to be determined under Section 2 (8) of the Bankruptcy Act—and if the decision of the Circuit Court of Appeals is to be considered as affirming the District Court's action taken under this sub-section—the action of the Circuit Court of Appeals in affirming the denial of the petition is proper and unassailable.

Proposition III.

The statutory right of redemption in Alabama is not "real or personal property or any equity or right in any such property" as contemplated by Section 75(n) of the Bankruptcy Act, does not come into the jurisdiction of the Bankruptcy Court upon the filing of a farmer debtor proceeding under Section 75, and may not be extended by such a proceeding.

1. The petition to reopen or refile was not adequate to begin a new proceeding under Section 75 of the Bankruptcy Act.

2. Even if the petition could be considered adequate, it sought only relief under sub-sections (a)-(r) which had already been accorded debtor; hence the matter was *res judicata*.

3. Even if the petition were adequate and the matter were not *res judicata* the petition was properly denied,

since a mortgagor after foreclosure in Alabama, does not have a property right on which to base a proceeding under Section 75.

ARGUMENT.

Proposition I.

The Order of the District Court of August 6, 1940, Dismissing the Petition to Reopen the Proceeding Under Section 75 of the Bankruptcy Act was not Appealable, and this Court should not Review the Action of the Circuit Court of Appeals in Affirming it.

January 4, 1938, the proceeding under Section 75 of the Bankruptcy Act was finally dismissed by an Order of the District Court (effective as of January 20, 1938) (R. 18), and no appeal was perfected. This is freely admitted in the very first paragraph of Petitioner's Argument on Page 8 of her brief.

March 11, 1940,—two years, two months, and seven days later—a petition for reopening and rehearing was filed (R. 24) which was denied by an Order dated August 6, 1940, (R. 41). This petition for a rehearing was addressed to the sound discretion of the Court and the Order denying it was not appealable.

This rule seems to have been well established at the time it was followed by this Court in the case of *Brockett vs. Brockett*, 2 How. 238, 11 L. Ed. 251, in the year 1844

and has been adhered to in an unbroken line of decisions since that date. In that case, after a final decree and during the same term, a petition was filed by the defendants to have the final decree opened for certain purposes; the Court took cognizance of the petition and referred it to a Master; and upon the coming in of the Master's Report the Court refused to open the final decree. An appeal was taken from this refusal as well as from the final decree. In considering a motion to dismiss the appeal this Court, speaking through Mr. Justice Story, said:

> "The next ground is, that an appeal has been taken from the refusal of the Court below to open the former decree rendered for the Appellant. It is plain that no appeal lies to this Court in such a matter, as it rests merely in the sound discretion of the Court below. And if this had been the sole appeal in the case, the appeal must have been dismissed."

The motion to dismiss the appeal was overruled because the appeal from the original dismissal order was taken within ample time but the Court made it clear that no appeal would lie from an order denying a petition to reopen a case.

In the case of *Conboy v. First National Bank of Jersey City*, 203 U. S. 141, 51 L. Ed. 128, a bankruptcy case, decided in 1906, the facts were as follows:

January 23, 1905, the Circuit Court of Appeals entered an order sustaining an order of the District Court affirming the order of a Referee in allowing the claim of First National Bank of Jersey City against the bankrupt's estate.

May 8, 1905, the Trustee filed a petition for rehearing which was denied. An appeal was perfected to this Court. Respondent made the point in this Court that no appeal would lie from the order denying the petition for a rehearing, to which Appellant countered that since the petition was duly considered and passed upon by the Court, the order disposing of it was appealable even though the petition was denied; or, that the order of January 23, 1905, had not become final until the petition for rehearing was denied. The Court held:

> "No appeal lies from orders denying petitions for rehearing, which are addressed to the discretion of the court and designed to afford it an opportunity to correct its own errors. Brockett v. Brockett, 2 How. 238, 17 L. ed. 251; Wylie v. Coxe, 14 How. 1, 14 L. ed. 301. Appellant might have made his application for rehearing and had it determined within the thirty days, and still have had time to take his appeal. But he let the thirty days expire, as it did February 22, 1905, and did not file his petition until May 8, 1905. The right of appeal had then been lost and appellant could not reinvest himself with that right by filing a petition for rehearing.
>
> "The cases cited for appellant, in which it was held that an application for a rehearing, made before the time for appeal had expired, suspended the running of the period for taking an appeal, are not applicable when that period had already expired. 'When the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter.' Credit Co.

v. Arkansas C. R. Co. 128 U. S. 258, 261, 32 L. ed. 448, 440, 9 Sup. Ct. Rep. 107, 108. . . .

"The petition was denied. Whether it could have been granted in view of the terms and spirit of the bankruptcy act, or the effect, if it had been, we are not called upon to discuss."

The most recent statement of this rule by this Court that we have seen is found in the case of *Wayne United Gas Company v. Owens-Illinois Glass Company*, 300 U. S. 131, 81 L. Ed. 557, decided in 1936. That case involved a proceeding for reorganization of a corporation under Section 77B of the Bankruptcy Act (now included in Chapter 10). (11 USCA 501-676.) The petition was dismissed on the motion of creditors. After a short time the Petitioner filed a petition to reopen the case. The Court, finding that good cause existed, entered an order reopening the case. After a further hearing, however, it entered an order reaffirming its former decision and dismissing the proceeding. An appeal was taken to the Circuit Court of Appeals where it was decided that the District Court did not have the power to reopen the case after the right of appeal had expired, and thus renew the right of appeal. This Court granted *certiorari* and in holding that a District Court has the right, in its discretion to reopen such a case under certain conditions, said:

"The granting of a rehearing is within the Court's sound discretion, and a refusal to entertain a motion therefor, *or a refusal of the motion, if entertained*, is not the subject of appeal." (Italics ours.)

For this statement the Court cited the following authorities:

> "Brockett v. Brockett, 2 How. 238, 11 L. ed. 251; Steines v. Franklin County, 14 Wall. 15, 20 L. ed. 846; Hardin v. Boyd, 113 U. S. 756, 28 L. ed. 1141, 5 S. Ct. 771; Boesch v. Graff, 133 U. S. 697, 33 L. ed. 787, 10 S. Ct. 378; San Pedro & C. del A. Co. v. United States, 146 U. S. 120, 36 L. ed. 911, 13 S. Ct. 94."

Since the decision in the *Wayne* case ,the Circuit Courts of Appeals in the Sixth and Tenth Circuits, have had occasion to pass upon this question in cases arising under Section 75 of the Bankruptcy Act, which were virtually on "all fours" with the case at bar as to the facts.

In the Tenth Circuit the case of *Mintz v. Lester*, 95 Fed. (2d) 590 was decided March 16, 1938. The pertinent facts were: December 20, 1935, the District Court, upon the motion of certain creditors and after a hearing, dismissed the proceeding. April 21, 1937, the debtor filed a motion to reinstate, seeking a rehearing upon the motion to dismiss and a reconsideration of the action of the Court in dismissing the proceedings. May 10, 1937, the trial court entered its order denying the motion to reinstate. June 14, 1937, the debtor filed a motion in the Circuit Court of Appeals seeking an appeal from the District Court's denial of her petition for a rehearing, and the appeal was granted.

Relying on the *Wayne* case the Court held:

> "Likewise, the order of May 10, 1937, was not appealable. The petition to reinstate in effect sought a reconsideration of the court's action in

> dismissing the proceeding by its order of December 20, 1935,—a rehearing of the motion to dismiss by a motion filed long after the time for appealing from such order had expired. A party may not avoid the effect of the statute limiting the time within which an appeal may be taken from an order, by filing after the time for appeal from such order has expired, a motion for rehearing or a motion to vacate the order and appealing from the order denying the motion for rehearing or the motion to vacate."

In the Sixth Circuit the question was presented in the case of *Chapman v. Federal Land Bank of Louisville*, 117 Fed. (2d) 321, decided January 14, 1941. There were two of these cases, Nos. 8400 and 8720. No. 8400 being duly appealed within the time allowed by law, we shall notice only No. 8720. The debtor's petition under Section 75 was filed July 18, 1938. Early in the proceedings motions were made by certain creditors to dismiss the proceedings and to authorize foreclosures in the State Court. The debtor filed an amended petition asking to be adjudicated a bankrupt under sub-section (s) but the Court ordered that this petition be held in abeyance until the motions to dismiss were disposed of. July 29, 1939, an order was entered over the objection of the farmer dismissing the proceeding, withdrawing all stay orders, etc. February 28, 1940, the debtor filed a petition for rehearing grounded on three decisions of this Court which had been rendered since the order of dismissal, namely, *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, 60 S. Ct. 221, 84 L. ed. 176; *Gray v. Union Joint Stock Land Bank of Detroit*, 308 U. S. 523; 60 S. Ct. 291, 84 L. ed. 443; *Morrison v. Fed-*

eral Land Bank, 308 U. S. 524, 60 S. Ct. 292, 293, 84 L. ed. 443.

Appellees made the point that an appeal would not lie from the order of June 19, 1940, denying the petition to rehear, which was filed seven months after entry of the order of dismissal. The Court held that the case fell precisely within the language of the *Wayne* case and dismissed the appeal.

We desire to point out particularly that the petition for rehearing in this case was filed upon substantially the same basis as the petition for rehearing in the case at bar. The Court entertained jurisdiction of the petition, considered it fully, made and signed a memorandum of conclusions, and ordered that the petition be dismissed, which is the exact course of the petition for rehearing in the case at bar. The fact that the Court considered the petition, therefore, does not make its order denying it appealable, but as was stated in the *Wayne* case ". . . a refusal of the motion, if entertained, is not the subject of appeal."

Therefore, the District Court's order of August 6, 1940, denying the petition to reopen the proceedings under Section 75 was not appealable, and the affirmance of that order by the Circuit Court of Appeals should not be reviewed by this Court.

Proposition II.

Whether or not the Order of the District Court Denying a Rehearing was Properly the Subject of Appeal, it was a Correct Order and its Affirmance by the Circuit Court of Appeals is unassailable.

1. The petition for rehearing, dated March 11, 1940, was addressed to the sound discretion of the District Court under its general equity powers—not under Section 2 (8) of the Bankruptcy Act.

For the sake of accuracy, in the event it becomes material, we desire to point out that Section 2 (8) of the Bankruptcy Act does not read as it is quoted on Page 10 of Petitioner's brief. It is there quoted as follows:

> "Close estates whenever it appears that they have been fully administered, by approving the final accounts and discharging the Trustees, and reopen them whenever it appears that they were closed before being fully administered."

That, of course, is the way that sub-section read prior to the Chandler Act which became effective June 22, 1938. It now reads:

> "Close estates, by approving the final accounts and discharging the Trustees whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown."

At the time the petition to reopen was filed, March 11, 1940, it was necessary that there be "cause shown" in order to justify the District Court in reopening a closed bankruptcy case, and even then it was within the sound discretion of the Court.

We do not think, however, that the petition to reopen in this case fell under this provision of the Bankruptcy Act. A proceeding under Section 75 (a)-(r) is not, strictly speaking, a bankruptcy proceeding, does not involve an "estate" and, of course, no estate has been "closed" when the proceeding is dismissed.

In the case of *Miller v. Mangus*, 125 Fed. (2d) 507, the Circuit Court of Appeals for the Tenth Circuit said:

> "But a proceeding under sub-sections a-r of 75, 11 USCA, 203 sub-sections a-r does not operate to pass title from the bankrupt to the Trustee or the Bankruptcy Court but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a mortatorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings." Citing: Wright v. Union Central Life Insurance Company 304, U. S. 502, 82 L. Ed. 1490.

If a proceeding were finally dismissed after an adjudication under sub-section (s) the provisions of Section 2 (8) with respect to reopening an estate would, of course, apply, but prior to that time it would not apply. In the instant case, Petitioner has not been adjudicated a bankrupt, nor has any amended petition been filed for this pur-

pose, all of the proceedings being limited strictly to Section 75 (a)-(r).

We think the District Court took cognizance of the petition and considered it under its general equity powers. This is the proper rule, as is announced in the case of *Wayne United Gas Company v. Owens-Illinois Glass Company, supra,* and the Court expressly based its views and conclusions on that case. That case involved a proceeding under Section 77B of the Bankruptcy Act, (now included in Chapter 10) which, like Section 75 (a)-(r) is not, strictly speaking, a bankruptcy proceeding, and also like Section 75 (a)-(r), contains no provision with respect to the circumstances and conditions under which the Court may reopen a closed proceeding. In that case this Court said:

> "But we think the Court has the power, for good reason, to revise its judgments upon seasonable application and before rights have vested on the faith of its action. Courts of law and equity have such power, limited by the expiration of the term at which the judgment or decree was entered and not by the period allowed for appeal, or by the fact that an appeal has been perfected. There is no controlling reason for denying a similar power to a Court of Bankruptcy or for limiting its exercise to the period allowed for appeal. The granting of a rehearing is within the Court's sound discretion . . . the rule which governs the case is that the Bankruptcy Court, in the exercise of a sound discretion, if no interventing rights will be prejudiced by its action, may grant a rehearing upon application diligently made and rehear the case upon the merits; . . ."

It, therefore, seems certain that Petitioner's approach to this case on the basis of whether the District Court abused its discretion in declining to reopen the case under Section 2 (8) is incorrect, the petition for rehearing amounting to nothing more nor less than a motion for a new trial in a law Court or a motion for a rehearing in an equity Court—a matter addressed to the sound discretion of the Court and from which no appeal lies.

We think the Circuit Court of Appeals also proceeded under this theory. Following expressly the *Wayne* case, that Court held that a Bankruptcy Court has power, in the exercise of its sound discretion, to revise its judgments upon seasonable application therefor—and it nowhere cited Section 2 (8) of the Bankruptcy Act as authority for that conclusion. It pointed out that the well known requirements—that the petition for rehearing be filed seasonably, that good reason be shown to reopen the case, etc.,—were "conditions precedent to the power of the Court to exercise its discretion upon the petition", and held that: "If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the Bankruptcy Court." True, the Court stated that, upon appeal, the petitioner carried the burden of showing that the District Court abused its discretion and that petitioner had failed to make such a showing, but the final conclusion was simply: "In view of these and other circumstances disclosed by the record, we think the judgment dismissing the petition was within the sound discretion of the Court below." In effect the appeal was dismissed as to this part of the case but following the modern trend (*Federal Land Bank of Springfield v.*

Hansen, 113 Fed. (2d) 82) an affirmance rather than a dismissal was entered.

2. Even if the propriety of the District Court's action in denying the petition for a rehearing was to be determined under Section 2 (8) of the Bankruptcy Act—and if the decision of the Circuit Court of Appeals is to be considered as affirming the District Court's action taken under this sub-section—the action of the Circuit Court of Appeals in affirming the denial of the petition is proper and unassailable.

The provision that the Court may for "cause shown" reopen estates which have been closed certainly contemplates that some good and sufficient reason shall be given to justify reopening a case. Moreover, in every instance the petition to reopen must be seasonably and diligently filed, and no rights which have vested on the faith of the previous order must be disturbed.

The petition to reopen in this case was filed two years, two months, and seven days after the order of dismissal was entered. It is obvious that this petition was not seasonably and diligently filed. Everyone had a right to suppose at that late date that it was too late for the case to be reopened.

Even if the petition had been seasonably filed, no reason was given for reopening the case. The petition merely recited that under Section 2 (8) of the Bankruptcy Act, the Court had power to reopen estates "closed before being fully administered" (presumably referring to that subsection before it was amended, June 22, 1938) and that

Petitioner's case had not been "fully administered". Even if the law had not been amended, the Petitioner had been adjudged a bankrupt and her estate had been closed, (none of which was true, however) these allegations would not constitute a sufficient basis upon which to reopen the case, since they are mere conclusions. The rule in such a case has always been that the petition to reopen must set out particular property or assets which have not been administered, and must be accompanied by affidavits or other suficient showing to satisfy the Court that the estate was closed prematurely. In *Re Newton* (Missouri 1901) 107 Fed. 429, 46 CCA 399, 6 Am. Bank. Rep. 52. In *Re Graff*, N. Y., 1918, 250 Fed. 997, 163 CCA 247.

Fortunately, we have some decisions interpreting Section 2 (8) as it now reads.

In the case of *In Re Butts* 123 Fed. (2d) 250, Arthur C. Butts, Jr. was adjudicated a bankrupt but after a time his estate was closed and the proceeding dismissed because he refused to post indemnity required by the Court to cover the cost of the proceeding. The Bankrupt's only excuse for failing to furnish the indemnity for more than a year was that he was unable to raise the amount thereof, $19.00, notwithstanding he earned a salary of $300.00 per month. In the meantime a creditor had taken a judgment against the bankrupt in a State Court. The Circuit Court of Appeals held that the District Court did not abuse its discretion in declining to reopen the case at the instance of the Bankrupt, who now tendered the indemnity, particularly since the creditor had changed his position and to reopen the case would prejudice his interest. The Court

also reviewed its previous decision in the case of *In Re Perlman*, 116 Fed. (2d) 49, saying:

> "As this Court said in In Re Perlman . . . what constitutes 'cause' for reopening a closed estate lies primarily within the discretion of the District Judge, and only for plain abuse of discretion should his decision be reversed. We there held that the Act contemplates expedition in calling the first meeting of creditors, and that a bankrupt should not be permitted to delay the meeting for seven months to suit his own convenience. There the bankrupt's excuse for failure to deposit the indemnity was that he was employed by a bank and could not get away during working hours to attend the first meeting of creditors if it should be called."

In the *Perlman* case the Court had likewise declined to disturb the action of the District Court in declining to reopen the case at the instance of the bankrupt.

The petition for rehearing in the case at bar further avers that a "similar duty and right is conferred by the provisions of Section 75 as amended." We have sought in vain for the provision of Section 75 alluded to. It could not be Paragraph (5) of sub-section (s) referring to the reinstatement of cases dismissed on account of the Supreme Court's decision holding the former sub-section (s) unconstitutional, because this case did not fall in that category. The petition also makes some reference to the changed interpretations of the Act, which we think amounts to nothing since the Act meant in the beginning what it meant then and means now.

By the most meticulous examination of the petition, therefore, we find no sufficient reason given to warrant the District Court in reopening the case and, *a fortiori*, nothing to warrant the Circuit Court of Appeals in reversing the action of the District Court for abuse of discretion.

Moreover, in the case at bar rights had vested in Storrs, Respondent's contract purchaser, which it would be manifestly inequitable and unjust to disturb. Storrs' purchase was made,—not only after the thirty days allowed for appeal had expired, but more than a year after the District Court's decree dismissing the farmer debtor proceeding became final. The decree dismissing the proceeding was dated January 4, 1938, the foreclosure sale was confirmed April 21, 1938, and Storrs bought the property April 3, 1939. Surely Storrs had a right at that date to assume that the decree of the District Court had become final and that there was no possibility of its being reopened on a mere motion for a rehearing. He was safe by more than a year from all rights of appeal. (11 USCA 48.). He paid his money, took possession of the property, and has since used it as his own. True, he took it subject to the statutory right of redemption, but that does not defeat this point. He got full ownership in fee subject only to a personal privilege on the part of the mortgagor to reacquire the property within a certain time by paying a certain sum of money. Meanwhile, Storrs was entitled to full possession and enjoyment of the property, including all rents and profits therefrom. He could use the property, dispose of timber, buildings, etc., and even commit waste without any accountability to the former mortgagor holding the right of redemption.

(See Alabama Code, 1940, *Whiteman v. Taber, Johnson v. Davis,* and *Wittmeier v. Cranford*—post this brief.)

Whether, therefore, the District Court in considering the petition to reopen the case was acting under its general equity powers, or under Section 2 (8) of the Bankruptcy Act, its refusal to reinstate the original proceeding was manifestly correct and the Circuit Court of Appeals was correct in affirming it.

Proposition III.

The Statutory Right of Redemption in Alabama is not "Real or Personal Property or any Equity or Right in any such Property" as Contemplated by Section 75(n) of the Bankruptcy Act, Does not come into the Jurisdiction of the Bankruptcy Court upon the Filing of a Farmer Debtor Proceeding under Section 75, and may not be extended by such a Proceeding.

The only question left in this case is whether Petitioner was entitled to any relief under the alternative prayer contained in the petition to reopen which reads as follows:

> "She prays that if she be mistaken in the form of relief, and that if she should refile instead of asking for reinstatement and reopening of her former case, then she prays that her former schedules and information be taken as part of this petition, and she hereby offers to pay such fee or fees as are required under said Act." (R. 24.)

Since this petition was filed one day before the statutory right of redemption expired, the question is presented as

to whether the District Court was warranted in denying the alternative prayer..

In the first place, we do not think the petition and prayer adequate even if a farmer in Alabama had the right to begin a proceeding under Section 75 at any time before his right of redemption after foreclosure expired. The petition is inadequate because it seeks nothing more than the privilege of proceeding anew under sub-section (a)-(r) —the full benefits of which the Petitioner had already received in the original proceeding. It is not a petition seeking to reopen the case in order that the debtor might amend the original petition and ask to be adjudicated a bankrupt under sub-section (s) of Section 75. It seeks only the privilege of traversing again the same ground that was covered in the original proceeding. Having had the benefits of these sub-sections, the matter was *res judicata*. *In re: Suzuki*, 20 Fed. Supp. 900; *In re: Hinshaw*, 33 Fed. Supp. 964.

Nevertheless, even if the petition could be considered adequate to begin a new proceeding under the Act and the matter were not *res judicata*, the alternative prayer of the petition was properly denied because Section 75 is not available to a mortgagor after foreclosure in the State of Alabama. Section 75 is available to a mortgagor after foreclosure and during the period of redemption only where the right of redemption may be said to be "real or personal property, or any equity or right in any such property" as provided under sub-section (n) and such not the case in the State of Alabama.

The redemption right is given by Title 7, Section 727, Code of Alabama, 1940, (unchanged since the petition was filed in this case) which reads as follows:

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in the manner provided in this chapter."

The exact nature and character of the right of redemption is given by Title 7, Section 743 of said Code (unchanged since the petition was filed in this case) which reads as follows:

> "The statutory rights of redemption given or conferred by this chapter are mere personal privileges and not property or property rights. The privileges must be exercised by the person, and in the mode and manner prescribed by the statute. The right or privilege conferred under this chapter is not subject to levy and sale under execution or attachment, nor is it subject to alienation except in the cases provided for in the chapter; but if the right or privilege is perfected by redemption as provided in this chapter, then and not until then, does it become property or rights of property subject to levy, sale, alienation or other disposition, except as is expressly authorized by statute."

That possession must be delivered to the purchaser at the foreclosure sale is shown by Title 7, Section 730, of said Code (unchanged since the petition was filed in this case), reading in part as follows:

> "The possession of the land must be delivered to the purchaser by the debtor, if in his possession or in the possession of anyone holding under him by privity of title, within ten days after written demand for the possession has been made by the purchaser, vendee or his agent . . . Failure of the debtor or anyone holding under him to comply with the provisions of this section forfeits the right of redemption."

The purchaser at the foreclosure sale is entitled to a deed immediately upon making the purchase, and the deed conveys to him full legal title subject only to the right of redemption as hereinabove described. Alabama Code 1940 Title 47, Section 168.

While this would seem to dispose of the question, we think it desirable to refer to a few of the many decisions of the Supreme Court in Alabama with respect to the right of redemption. The cases have uniformly held since the first enactment of this Statute in 1842 that the right of redemption is not property nor any interest in property, but a mere personal privilege. Typical of the statements found in the cases is the following excerpt taken from *Whiteman v. Taber*, 83 So. 595:

> "The nature of the right or privilege of statutory redemption has often been defined, and we have uniformly decided that it is merely a personal privilege, is neither property nor the right of prop-

> erty, is not subject to levy or sale as such under execution, and, as stated, is merely a right or privilege of the debtor."

The decisions are likewise uniform in holding that the purchaser at foreclosure sale gets a fee title subject only to the exercise of the personal privilege to repurchase it. As was stated, in *Cramer v. Watson*, 73 Ala. 127:

> "He is not a mortgagee in possession, but a purchaser, the absolute owner, entitled to rents and profits, and unimpeachable for waste."

Again in *Johnson v. Davis*, 60 So. 799:

> "It is well settled that one in possession of land, as purchaser at a mortgage sale duly and legally made in compliance with the terms of the mortgage, is not chargeable with rent or for waste."

True, the right of redemption passes to the Trustee in Bankruptcy when a mortgagor holding the right of redemption is adjudicated a voluntary bankrupt and the Trustee may exercise it on behalf of the estate, *but it is not a property asset and may not be sold or assigned by the Trustee.* It reaches the hands of the Trustee under what might be denominated an "assignment", the Court holding that the filing of a petition in bankruptcy amounts to an "assignment" of the right of redemption, and one assignment is permitted by the state statute. Moreover, the Trustee has authority under the Bankruptcy Act to take the right of redemption not as a property asset or an interest in property, but solely under that part of Section 70 of the Act (11 USCA 110) giving the Trustee authority to take charge of: "Powers which he (the bankrupt) might

have exercised for his own benefit but not those which he might have exercised solely for some other person".

The manner in which the right reaches the hands of the Trustee is explained in the case of *Johnson vs. Davis, supra*, as follows:

> "When the mortgagor was adjudged a bankrupt, the statute authorized redemption by the assignee of the statutory right and Bankruptcy Act Section 70 vested the Trustee with the title to *all property* of the bankrupt *as well as* certain powers and rights including 'powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person, etc.' It is plain that the mortgagor could have exercised this right for his own benefit prior to his bankruptcy, and it is equally plain that the Trustee became vested with this right, under the Bankruptcy Law upon the adjudication of the bankrupt." (Italics ours.)

That the Trustee may not sell or assign the right of redemption as though it were a property asset is held in the case of *Wittmeier vs. Cranford*, 73 So. 981, from which we quote:

> "The complainant derived no right to redeem under the assignment from the Trustee in bankruptcy . . . While this Court held in the case of Johnson vs. Davis, 180 Ala. 143, 60 Sou. 799, that the Trustee in bankruptcy was an assignee as contemplated by the redemption statute, we also held in the case of Leith vs. Galloway Coal Company, 189 Ala. 204, 66 So. 149 that the right did not extend to the grantee or assignee of the Trustee in bankruptcy."

Viewed from any angle whatever, therefore, the right of redemption in Alabama is neither real nor personal property nor any right, interest, or equity in either, but a mere personal privilege which is not even assignable except in the limited manner authorized by the Statute. The purchaser at the foreclosure sale gets both title and possession, is not accountable for rent, may commit waste or otherwise use or depredate the property with impunity. Accordingly, the right of redemption is not of the character contemplated by the provisions of Section 75 of the Act.

This point becomes perfectly clear when the terms of the Act are carefully examined in the light of the foregoing. Section 75 (n) provides that the filing of a petition shall immediately subject the farmer "and all his property . . . including all real or personal property or any equity or right in any such property, including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired . . ."

It is provided in the next paragraph of the same subsection: "In all cases where, at the time of filing the petition, the period of redemption has not or had not expired . . . the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this Section."

Since to come under the terms of this sub-section the right of redemption must necessarily be property or an interest in property and the right of redemption in Alabama is neither, it follows that even if the petition of March 11, 1940, could have been regarded as sufficient to begin a proceeding under Section 75 the alternative

prayer was properly denied. The Court's record in the case showed that the debtor had lost all property rights in the land listed in her original schedules (her only asset) which had passed by foreclosure to Respondent, and from Respondent by contract of sale to Storrs.

Other provisions of Section 75 show with equal clarity that its terms are available to only those farmers who have both a property right and the right of possession in their farms. It is provided by sub-section (s) that upon the filing of an amended petition asking to be adjudicated a bankrupt the farmer may, at the same time, petition the Court that "all his property . . . be appraised." It is further provided that after the debtor's exemptions have been set aside, etc., the Court "shall further order that the *possession* under the supervision and control of the Court of any part or parcel or all of the remainder of the debtor's property *shall remain in the debtor*, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances." (Italics ours.) It is then provided that upon certain conditions being complied with the Court shall stay all judicial proceedings, etc., against the debtor "or any of his property" for a period of three years and that during the three years the debtor shall be permitted to *"retain possession* of all or any part *of his property"*, (Italics ours) provided he pays a reasonable rental semi-annually to be fixed by the Court. The rental is to be the amount and kind that is customary in the community where the property is located.

From the foregoing it is clear that Section 75 is limited in its application with respect to debtors whose property

has been sold at foreclosure sale to those cases where, under State law, the debtor still has a property interest and the right to possession in the farm property which has been foreclosed upon. Obviously, Petitioner in the case at bar does not have a property interest in the farm which she seeks to continue as the subject of litigation. She does not have a right to possession and, indeed, would have lost the personal privilege of redemption had she not surrendered possession to the purchaser at foreclosure sale. Therefore, she could not "remain" in possession nor could she pay a "rental". Manifestly, therefore, Section 75 has no application, and may not be availed of in this case.

Petitioner in her brief places great reliance upon an observation made by this Court in deciding the case of *Wright v. Logan* . . . U. S. . . . 86 L. Ed. Advance Opinions 443 (October term, 1941, No. 229) as follows:

> "It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under Section 75 continued to be a part of their assets, subject to administration by the Bankruptcy Court for Section 75 (n) subjects all of the farmer debtor's assets, specifically including rights of redemption to the jurisdiction of the Bankruptcy Court and provides 'the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this Section.'"

This observation was absolutely correct in the case where it was made. The case involved the right of redemption after foreclosure under the law of the State of

Illinois. In that State the mortgagor is given the right to redeem for twelve months after the date of foreclosure sale and if the right is not exercised creditors are given a similar right for an additional three months. Illinois Revised Statutes 1941, Chapter 77, Sections 18-20. *The mortgagor retains title and possession of the land until the period of redemption has expired and a deed is delivered.* This has been many times held by the Supreme Court of that State as will be illustrated by a few excerpts from decisions as follows:

In *Williams vs. Williston*, 315 Ill. 183, 146 N. E. 143, it is said:

> "The purchaser of land at a master's sale pursuant to a decree of foreclosure is not by his purchase or the certificate of sale issued to him vested with the title to the land, but acquires the right to receive the redemption money, if redemption is made within the time and in the manner prescribed by the statute, or, in case no redemption is so made within that period, then to receive a master's deed. Sutherland v. Long, 273, Ill. 309, 112 N. E. 660. A master's certificate of sale does not purport to convey title, but describes the premises purchased, the amount paid therefor, and the time when the purchaser will be entitled to a deed if no redemption be made. Smith's Stat. 1923, c. 77, Sec. 16; Lightcap v. Bradley, 186 Ill. 510, 58 N. E. 221; Allison v. White 285 Ill. 311, 120 N. E. 809. Both before and after the sale under a foreclosure decree the owner of the equity of redemption has the same estate in the land. Lightcap v. Bradley, supra; Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45; Aetna Life Ins. Co. v. Beckman, 210 Ill. 394, 71 N. E. 452."

In the earlier case of *Aetna Life Ins. Co. v. Beckman*, 210 Ill. 394, 71 N. E. 452, it is said:

> "Under our law, after a foreclosure sale, the owner of the equity of redemption still has precisely the same estate that he had prior to the decree of foreclosure. Stephens v. Illinois Mutual Ins. Co., 43 Ill. 327; Rockwell v. Servant, 63 Ill. 424; Lightcap v. Bradley, 186 Ill. 510, 58 N. E. 221; Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45."

And in the more recent case of *Chicago Joint Stock Land Bank vs. McCambridge*, 343, Ill. 456, 175 N. E. 834, it is said:

> "Both before and after a sale under a foreclosure decree the owner of the equity of redemption has the same estate in the land. Williams v. Williston, 315 Ill. 178, 146 N. E. 143; Aetna Life Ins. Co. v. Beckman, 210 Ill. 394, 71 N. E. 452. The only qualification of his estate is that the amount and time of the redemption have become absolutely fixed by the decree and sale, and his estate will be absolutely divested if he fails to redeem within the alloted time. Stephens v. Illinois Mutual Ins. Co., 43 Ill., 327. Until the conveyance by the master the mortgagor or his grantee is entitled to the possession and use of the premises to the same extent as before the sale, and may convey them as he chooses, but upon such conveyance by the master, the grantee becomes vested with the complete title."

In this connection we respectfully call the Court's attention to the case of *In re Duffy*, 9 Fed. Supp. 166, decided in 1934 by the Federal District Court for the Eastern Dis-

trict of Illinois. That was a proceeding under Section 75 of the Bankruptcy Act brought by an Illinois farmer whose property had been sold under foreclosure in which the mortgagee creditor raised the point as to whether the right of redemption in Illinois was "property" within the purview of Section 75. The Court made an extensive review of the Illinois decisions reaching the following conclusion:

> "I conclude . . . that the right of the bankrupt to redeem at the time he filed his petition, constitutes a property right within the meaning of Section 75 of the Bankruptcy Act."

Manifestly this Court was correct in the *Wright-Logan* case, and the District Court was correct in the *Duffy* case in reaching the conclusion that under the law of Illinois a farmer may avail himself of Section 75 at any time within the period allowed for redeeming his farm property after foreclosure. This conclusion, however, but serves to strengthen our point that under Alabama law where the mortgagor after foreclosure has no property right or interest in the farm, no right to possession, and no right to collect rents or complain about waste, such a mortgagor does not have such a right in the property as is contemplated by the provisions of Section 75.

The provisions of Section 75 were clearly not intended to alter or change the rights of parties under the redemption laws of the several States; they were only intended to "extend" the period of redemption or the time within which redemption might be effected. That this is true is illustrated by the fact that Section 75 in no way at-

tempted to write a redemption statute into the laws of a State which does not already have one. The Section, as applied to a mortgagor after foreclosure, was intended merely to give the debtor a longer period of time within which to meet his obligations under redemption laws as they existed in the several States where, under those laws, the mortgagor had property rights after foreclosure of the character described in said Section.

Consider for a moment some of the anomalous situations and insurmountable barriers which would inevitably be encountered were an attempt made to give Section 75 application to a mortgagor after foreclosure in Alabama:

1. The purchaser at foreclosure gets both title and possession. Therefore, unless the Alabama statute is to be considered as amended or set aside in part by Section 75, the debtor could not be given possession of the property.

2. Under Section 75 it is contemplated that the debtor shall not only "retain possession" but pay a reasonable rental during a possible three-year tenure. As pointed out above, this cannot be done since the purchaser at foreclosure sale, as owner, is entitled to both possession and the rents and profits; but, if it could be done we would have the anomaly of a debtor paying to the Court for the benefit of the owner, rent which is already the absolute property of the owner.

3. Under the Alabama law the purchaser at foreclosure sale, as owner, is entitled to deal with the

> property just as though no statutory right of redemption existed. He may sell timber, minerals, etc., commit waste if he so desires, and exercise all other rights of ownership without being accountable in any way to the person who owned the property prior to foreclosure. Moreover, he may place improvements upon the property without the consent of the former owner or anyone else, and if the former owner redeems he must pay in addition to other amounts provided by statute the full value of the improvements so placed upon the property. (Ala. Code, 1940, Title 7, Sec. 732.)

Since it is clearly impossible, without setting aside State laws, to give the mortgagor after foreclosure any of the salient benefits provided by Section 75 for farmer debtors—and since it is also clear that the debtor has no title, property interest, or equity of any character in the farm property after foreclosure—the conclusion is inescapable that Section 75 was not intended to apply to a situation such as obtains in Alabama.

We think the Congress, in enacting Section 75 and providing for its application in cases where foreclosure has been had but the right of redemption has not expired, contemplated the large group of States in which the mortgagor retains some property right and the right to possession and use of the farm property during the period of redemption, and perhaps, also, the smaller group of States in which the mortgagor retains, after foreclosure, some property interest and certain privileges provided by Statute, although not retaining possession. It seems conclusive, however, that the Alabama situation was not contemplated

and cannot be brought within the purview of either the letter or the spirit of the Act.

CONCLUSIONS.

1. The petition of March 11, 1940, filed in the District Court by the farmer debtor, Petitioner here, seeking to reopen the proceeding under Section 75 of the Bankruptcy Act, which had been dismissed by an order of January 4, 1938 (effective January 20, 1938), was addressed to the sound discretion of the Court and the order of August 6, 1940, denying the petition and refusing to reopen the case was not appealable. Therefore, this Court should not review the action of the Circuit Court of Appeals in affirming the order of August 6, 1940.

2. Even if the order of August 6, 1940, denying the petition to reopen the case should be considered appealable it was a correct order because the petition was not seasonably filed, gave no good reason for reopening the case, and rights had vested in Storrs, an innocent third party, which it would be inequitable and unjust to disturb. Accordingly, the Circuit Court of Appeals correctly affirmed the order and its action should be affirmed by this Court.

3. The alternative prayer of the petition of March 11, 1940, asking that it be considered as a refiling of the farmer debtor proceeding was properly denied because (1) the petition was inadequate to begin a proceeding under

Section 75 of the Bankruptcy Act, and (2) Section 75 is not available to a mortgagor after foreclosure in the State of Alabama.

Respectfully submitted,

Thomas Harvey Hedgepeth

THOMAS HARVEY HEDGEPETH,
860 St. Charles Street,
New Orleans, Louisiana,
Attorney for Respondent.

Of Counsel:
E. F. STEINER,
H. D. FINLAY, JR.,
860 St. Charles Street,
New Orleans, Louisiana.

State of Louisiana,
Parish of Orleans.

I, Thomas Harvey Hedgepeth, hereby certify that I have on this the 27th day of November, 1942, mailed, by registered mail, postage prepaid, copies of the foregoing brief to Hon. Walter J. Knabe, Bell Building, Montgomery, Alabama, and Hon. Jack Crenshaw, First National Bank Building, Montgomery, Alabama, Attorneys for Petitioner.

Thomas Harvey Hedgepeth

SUPREME COURT OF THE UNITED STATES.

No. 172.—October Term, 1942.

Minnie Reese Richardson Wragg, Petitioner, vs. Federal Land Bank of New Orleans.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

After her petition for a composition or extension of her debts in a farmer-debtor proceeding under § 75 of the Bankruptcy Act, 11 U. S. C. § 203, had been dismissed, petitioner applied to reopen the proceeding or, in the alternative, to be permitted to institute a new proceeding under § 75. The questions for our decision are whether the courts below erred in denying her application and whether, at the time of her application, her right as mortgagor to redeem Alabama real estate after its sale on foreclosure of the mortgage was such that it can be administered by the court in a § 75 proceeding.

In 1937, after respondent mortgagee had obtained a decree of foreclosure, but before foreclosure sale, petitioner filed a petition under § 75 seeking a composition or extension of her debts. The bankruptcy court referred the proceeding to a conciliation commissioner; petitioner filed proposed terms of composition or extension to which respondent filed objections; the conciliation commissioner then recommended that the offer be not approved on the ground that it did not contain an equitable and feasible method of liquidating respondent's claim and of securing petitioner's financial rehabilitation.

The court confirmed the report of the conciliation commissioner, holding that petitioner was not entitled to amend her petition so as to proceed under §75(s), and directed that the proceeding be dismissed as of January 19, 1938. Petitioner's motion for leave to appeal to the Circuit Court of Appeals in forma pauperis and her petition for certiorari to this Court were denied. 95 F. 2d 252; 305 U. S. 596. After the farmer-debtor proceeding was dismissed respondent purchased the mortgaged property at a

foreclosure sale, which was confirmed in April, 1938. Nearly a year later, respondent contracted to sell the property to a third party, the contract stipulating that it was "subject to the statutory right of redemption following foreclosure if any exists".

Alabama law allows to the mortgagor a two-year redemption period after foreclosure sale. Title 7, § 727, Code of Alabama, 1940. On March 11, 1940, one day before the expiration of this period,[1] petitioner filed her application in the bankruptcy court. It referred to her prior § 75 proceeding, alleging that her property had not been fully administered in that proceeding and that she was entitled to further relief, especially in the light of the changed conditions and interpretation of the Act (obviously a reference to the decision in *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, decided December 4, 1939). She accordingly prayed that the case be reopened and reinstated. In the alternative she asked that, if she were entitled only to file a new petition, then her former schedules should be deemed a part of her petition, and she offered to pay such filing fees as the statute requires.

The district court thought that even though the dismissal of the original proceeding was erroneous under the rule subsequently announced in the *Bartels* case, there were no circumstances sufficient to persuade the court, in the exercise of its discretion, that the proceeding should be reopened upon an application filed more than two years after it had been dismissed. The court accordingly denied the application. 34 F. Supp. 374. The Circuit Court of Appeals for the Fifth Circuit affirmed. 125 F. 2d 1003. We granted certiorari, 317 U. S. —, the questions raised being of importance in the administration of the Bankruptcy Act.

We do not differ with the conclusion of both courts below that it was within the sound discretion of the bankruptcy court to decline to reopen the original order of dismissal. A motion to reopen a proceeding may not properly be substituted for an appeal from its decision. See *Wayne Gas Co.* v. *Owens Co.*, 300 U. S. 131, 135; *Pfeister* v. *Illinois Northern Finance Corp.*, decided November 16, 1942, page 8. But the dismissal of the original proceeding and denial of the application to reopen it were not bars to a new proceeding under § 75 to secure whatever relief the

[1] Petitioner contends that on March 11, 1940, nearly six weeks of the period of redemption remained. We find it unnecessary to determine the correctness of this contention.

Act would afford with respect to petitioner's remaining interest in the mortgaged property. We find no intimation in the language and purposes of the Act that an unsuccessful earlier proceeding would preclude a new petition so long as the farmer retains an interest which could be administered in a proceeding under § 75.

Respondent argues that under Alabama statutes and decisions the statutory right of redemption after foreclosure is defined as a "personal privilege" rather than as "property or property rights" (Title 7, § 743), and hence is not within the jurisdiction of the bankruptcy court in a farmer-debtor proceeding. But § 75 prescribes its own criteria for determining what property interests may be brought within the jurisdiction of the court. In the interpretation and application of the Bankruptcy Act as in the case of other federal statutes, federal not local law applies. *Prudence Corp.* v. *Geist*, 316 U. S. 89, 95 and cases cited. It is for the bankruptcy court to determine, by reference to the provisions of the bankruptcy statute, what rights created by state law—regardless of the characterization which may be applied to them by state statutes and decisions—are within the jurisdiction of the bankruptcy court. *United States* v. *Pelzer*, 312 U. S. 399, 402-03.

Under § 168 of Title 47 of the Alabama Code of 1940, the purchaser at foreclosure sale is entitled to a deed immediately upon making the purchase and the deed conveys to him full legal title subject only to the right of redemption. By §§ 727 and 743 of Title 7, the mortgagor retains a right of redemption, which is "not subject to alienation", save as it may be transferred or assigned to an assignee who may redeem. *Estes* v. *Johnson*, 234 Ala. 191; *Crawford* v. *Horton*, 234 Ala. 439, 444. Section 75(n) of the Bankruptcy Act confers jurisdiction over the debtor's "right or the equity of redemption where the period of redemption has not or had not expired". *Wright* v. *Logan*, 315 U. S. 139, 142; and see *State Bank of Hardinsburg* v. *Brown*, decided November 16, 1942, pp. 3-5. Looking at the scope and purpose of § 75, we think petitioner's interest in the mortgaged property, whether it be denominated a property right or a privilege of redemption, is an interest intended to be subject to the court's jurisdiction and is capable of administration in a farmer-debtor proceeding. See *Mangus* v. *Miller*, 317 U. S. —.

It follows that petitioner's right of redemption was within the jurisdiction of the court; that she was entitled to initiate a new

proceeding for the administration of the property in farmer-debtor proceedings, and to ask that her petition and schedules be allowed to stand as the petition and schedules in such a proceeding.

Reversed.

Mr. Justice BLACK took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.